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Best Coast Report



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Title 3—

Proclamation 6518 of December 24, 1992

The President

Grant of Executive Clemency

By the President of the United States of America

A Proclamation

Today I am exercising my power under the Constitution to pardon former Secretary of Defense Caspar Weinberger and others for their conduct related to the Iran-Contra affair.

For more than 6 years now, the American people have invested enormous resources into what has become the most thoroughly investigated matter of its kind in our history. During that time, the last American hostage has come home to freedom, worldwide terrorism has declined, the people of Nicaragua have elected a democratic government, and the Cold War has ended in victory for the American people and the cause of freedom we championed.

In the mid 1980's, however, the outcome of these struggles was far from clear. Some of the best and most dedicated of our countrymen were called upon to step forward. Secretary Weinberger was among the foremost.

Caspar Weinberger is a true American patriot. He has rendered long and extraordinary service to our country. He served for 4 years in the Army during World War II where his bravery earned him a Bronze Star. He gave up a lucrative career in private life to accept a series of public positions in the late 1960's and 1970's, including Chairman of the Federal Trade Commission, Director of the Office of Management and Budget, and Secretary of Health, Education, and Welfare. Caspar Weinberger served in all these positions with distinction and was admired as a public servant above reproach.

He saved his best for last. As Secretary of Defense throughout most of the Reagan Presidency, Caspar Weinberger was one of the principal architects of the downfall of the Berlin Wall and the Soviet Union. He directed the military renaissance in this country that led to the breakup of the communist bloc and a new birth of freedom and democracy. Upon his resignation in 1987, Caspar Weinberger was awarded the highest civilian medal our Nation can bestow on one of its citizens, the Presidential Medal of Freedom.

Secretary Weinberger's legacy will endure beyond the ending of the Cold War. The military readiness of this Nation that he in large measure created could not have been better displayed than it was 2 years ago in the Persian Gulf and today in Somalia.

As Secretary Weinberger's pardon request noted, it is a bitter irony that on the day the first charges against Secretary Weinberger were filed, Russian President Boris Yeltsin arrived in the United States to celebrate the end of the Cold War. I am pardoning him not just out of compassion or to spare a 75-year-old patriot the torment of lengthy and costly legal proceedings, but to make it possible for him to receive the honor he deserves for his extraordinary service to our country.

Moreover, on a somewhat more personal note, I cannot ignore the debilitating illnesses faced by Caspar Weinberger and his wife. When he resigned as Secretary of Defense, it was because of his wife's cancer. In the years since he left public service, her condition has not improved. In addition, since that time, he also has become ill. Nevertheless, Caspar Weinberger

has been a pillar of strength for his wife; this pardon will enable him to be by her side undistracted by the ordeal of a costly and arduous trial.

I have also decided to pardon five other individuals for their conduct related to the Iran-Contra affair: Elliott Abrams, Duane Clarridge, Alan Fiers, Clair George, and Robert McFarlane. First, the common denominator of their motivation—whether their actions were right or wrong—was patriotism. Second, they did not profit or seek to profit from their conduct. Third, each has a record of long and distinguished service to this country. And finally, all five have already paid a price—in depleted savings, lost careers, anguished families—grossly disproportionate to any misdeeds or errors of judgment they may have committed.

The prosecutions of the individuals I am pardoning represent what I believe is a profoundly troubling development in the political and legal climate of our country: the criminalization of policy differences. These differences should be addressed in the political arena, without the Damocles sword of criminality hanging over the heads of some of the combatants. The proper target is the President, not his subordinates; the proper forum is the voting booth, not the courtroom.

In recent years, the use of criminal processes in policy disputes has become all too common. It is my hope that the action I am taking today will begin to restore these disputes to the battleground where they properly belong.

In addition, the actions of the men I am pardoning took place within the larger Cold War struggle. At home, we had a long, sometimes heated debate about how that struggle should be waged. Now the Cold War is over. When earlier wars have ended, Presidents have historically used their power to pardon to put bitterness behind us and look to the future. This healing tradition reaches at least from James Madison's pardon of Lafitte's pirates after the War of 1812, to Andrew Johnson's pardon of soldiers who had fought for the Confederacy, to Harry Truman's and Jimmy Carter's pardons of those who violated the Selective Service laws in World War II and Vietnam.

In many cases, the offenses pardoned by these Presidents were at least as serious as those I am pardoning today. The actions of those pardoned and the decisions to pardon them raised important issues of conscience, the rule of law, and the relationship under our Constitution between the government and the governed. Notwithstanding the seriousness of these issues and the passions they aroused, my predecessors acted because it was time for the country to move on. Today I do the same.

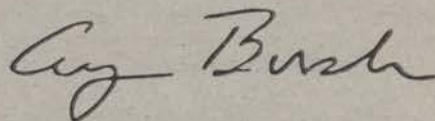
Some may argue that this decision will prevent full disclosure of some new key fact to the American people. That is not true. This matter has been investigated exhaustively. The Tower Board, the Joint Congressional Committee charged with investigating the Iran-Contra affair, and the Independent Counsel have looked into every aspect of this matter. The Tower Board interviewed more than 80 people and reviewed thousands of documents. The Joint Congressional Committee interviewed more than 500 people and reviewed more than 300,000 pages of material. Lengthy committee hearings were held and broadcast on national television to millions of Americans. And as I have noted, the Independent Counsel investigation has gone on for more than 6 years, and it has cost more than \$31 million.

Moreover, the Independent Counsel stated last September that he had completed the active phase of his investigation. He will have the opportunity to place his full assessment of the facts in the public record when he submits his final report. While no impartial person has seriously suggested that my own role in this matter is legally questionable, I have further requested that the Independent Counsel provide me with a copy of my sworn testimony to his office, which I am prepared to release immediately. And I understand Secretary Weinberger has requested the release of all of his notes pertaining to the Iran-Contra matter.

For more than 30 years in public service, I have tried to follow three precepts: honor, decency, and fairness. I know, from all those years of service, that the American people believe in fairness and fair play. In granting these pardons today, I am doing what I believe honor, decency, and fairness require.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, pursuant to my powers under Article II, Section 2, of the Constitution, do hereby grant a full, complete, and unconditional pardon to Elliott Abrams, Duane R. Clarridge, Alan Fiers, Clair George, Robert C. McFarlane, and Caspar W. Weinberger for all offenses charged or prosecuted by Independent Counsel Lawrence E. Walsh or other member of his office, or committed by these individuals and within the jurisdiction of that office.

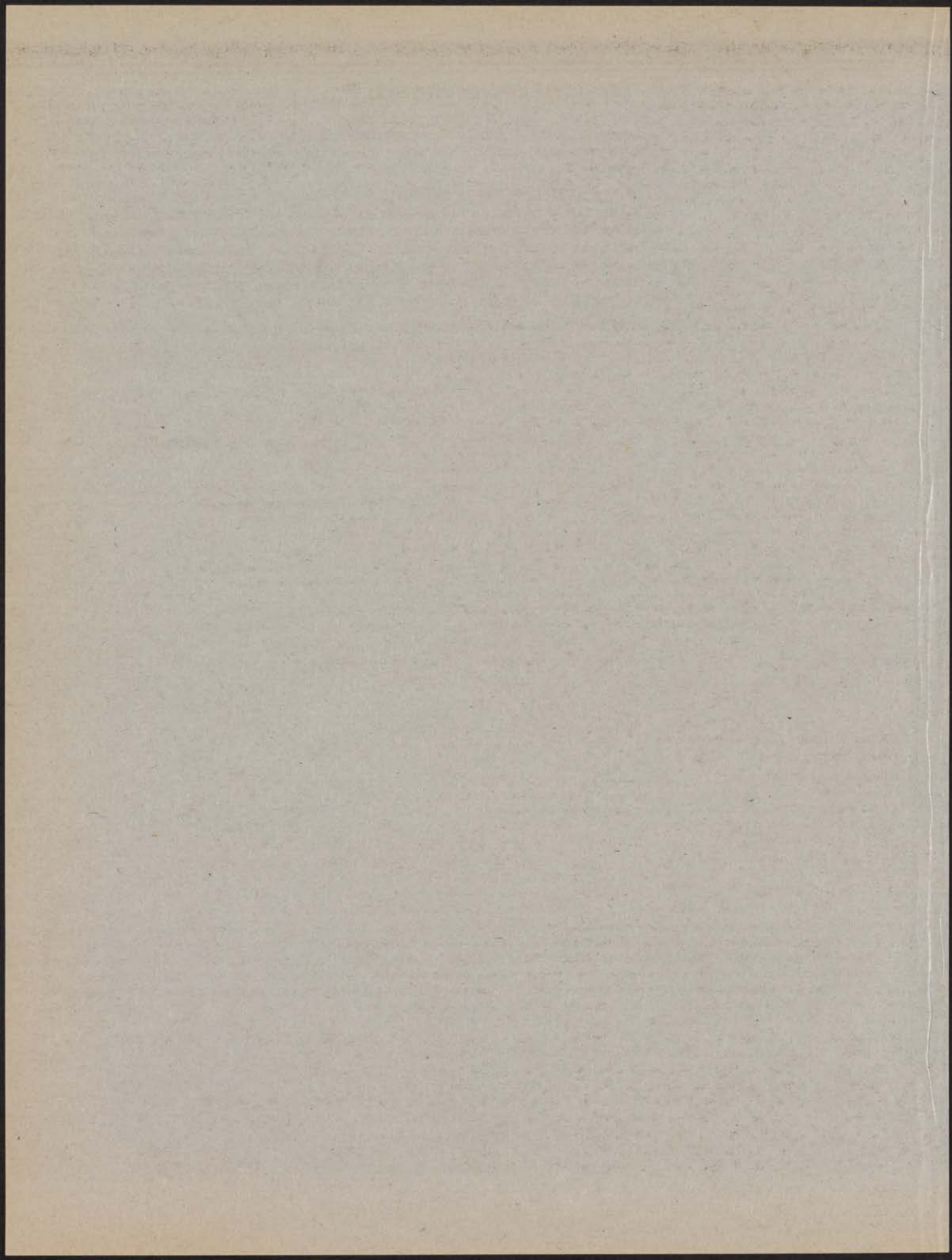
IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of December, in the year of our Lord nineteen hundred and ninety-two, and of the Independence of the United States of America the two hundred and seventeenth.



[FR Doc. 92-31848

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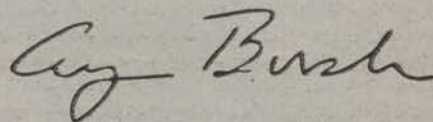
Presidential Determination No. 93-5 of December 15, 1992

Presidential Determination on Extending the Agreement for Cooperation Between the United States of America and the People's Republic of Bangladesh Concerning Peaceful Uses of Nuclear Energy

Memorandum for the Secretary of State, the Secretary of Energy

I have considered the proposed agreement to extend for a period of 20 years the Agreement for Cooperation Between the United States of America and the People's Republic of Bangladesh Concerning Peaceful Uses of Nuclear Energy signed at Dhaka September 17, 1981, along with the views, recommendations, and statements of the interested agencies.

I have determined that the performance of the agreement for an additional period of 20 years will promote, and will not constitute an unreasonable risk to, the common defense and security. Pursuant to section 123 b. of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2153(b)), I hereby approve the proposed agreement on extension and authorize you to arrange for its execution.

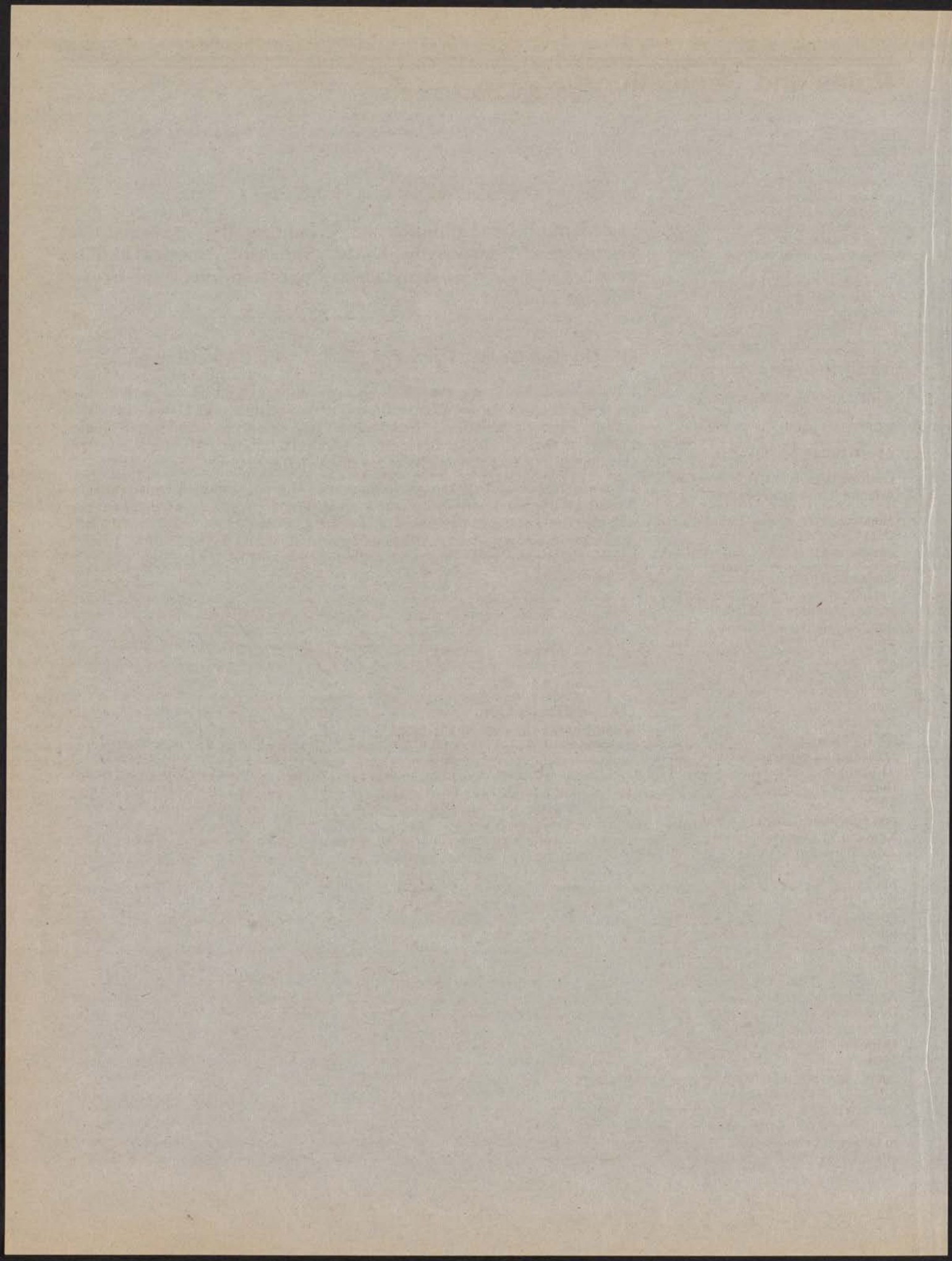


THE WHITE HOUSE,
Washington, December 15, 1992.

[FR Doc. 92-31859

Filed 12-28-92; 3:12 pm]

Billing code 3195-01-M



Rules and Regulations

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Wednesday, December 30, 1992

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 766]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona lemons that may be shipped to fresh domestic markets during the period from December 20 through December 26, 1992. This action is being taken in response to a recent court action in which a temporary restraining order was granted which enjoined the Secretary from discontinuing weekly volume controls on the fresh sale of lemons.

EFFECTIVE DATE: Regulation 766 (7 CFR 910.166) is effective for the period from December 20 through December 26, 1992.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 690-3670; or Martin Engeler, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487-5901.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 910 (7 CFR part 910), as amended, regulating the handling of lemons grown in California and Arizona. This order is effective under the Agricultural

Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of lemons grown in California and

Arizona subject to regulation under the lemon marketing order and approximately 2,000 lemon producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities. The Administrator of AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Volume regulations have been issued under the California-Arizona lemon marketing order during the 1992-93 season for the weeks ending November 28 through December 19. On December 14, the Department concluded that volume regulations were not necessary for the remainder of the season to effectuate the declared policy of the Act.

On December 15, the Lemon Administrative Committee (Committee) met in Newhall, California, and recommended volume regulation for the week ending December 26 of 275 cars.

On December 17, a temporary restraining order (TRO) was granted in U.S. District Court (court) in Washington, DC which enjoined the Secretary from suspending weekly volume controls for California-Arizona lemons. At that time, a hearing for a preliminary injunction was scheduled for December 29, 1992.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because this action needs to be in effect by December 20 in order to comply with the December 17 court decision.

List of Subjects in 7 CFR Part 910

Lemons, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.1066 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§910.1066 Lemon Regulation 766.

The quantity of lemons grown in California and Arizona which may be handled during the period from December 20 through December 26, 1992, is established at 275,000 cartons.

Dated: December 20, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-31660 Filed 12-29-92; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 905

[Docket No. FV92-905-1FR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Finalize Relaxed Minimum Size Requirement for Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action finalizes an interim final rule which relaxed the minimum size requirement for domestic shipments of Florida red seedless grapefruit to size 56 (3 1/16 inches in diameter) through November 7, 1993. The minimum size requirement would have increased to size 48 (3 3/16 inches in diameter) on October 26, 1992, had the relaxation not been issued. The relaxation enabled handlers to ship size 56 red seedless grapefruit for the entire 1992-93 season. The relaxation was based on this season's current and prospective crop and market conditions, and the maturity and flavor levels of red seedless grapefruit.

EFFECTIVE DATE: January 29, 1993.

FOR FURTHER INFORMATION CONTACT:

Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456; telephone: 202-720-5331; or John R. Toth, Southeast Marketing Field Office, USDA/AMS, P.O. Box 2276, Winter Haven, Florida 33883; telephone: 813-299-4770.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos

grown in Florida. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 100 Florida citrus handlers subject to regulation under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida, and about 10,200 producers of these citrus fruits in Florida. Small agricultural producers have been defined by the Small

Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. A minority of these handlers and a majority of the producers may be classified as small entities.

The Citrus Administrative Committee (committee), which administers the marketing order locally, met September 15, 1992, and unanimously recommended a relaxation in the minimum size requirement for red seedless grapefruit. The committee meets prior to and during each season to review the handling regulations effective on a continuous basis for each citrus fruit regulated under the marketing order. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information and determines whether modification, suspension, or termination of the handling regulations would tend to effectuate the declared policy of the Act.

Section 905.306 (7 CFR 905.306) specifies minimum grade and size requirements for Florida citrus. Such requirements for domestic shipments are specified in that section in Table I of paragraph (a), and for export shipments in Table II of paragraph (b). Export requirements were not changed by the relaxation.

The interim final rule was issued on October 9, 1992, with an effective date of October 26, 1992, and published in the Federal Register (57 FR 47255, October 15, 1992). The interim final rule provided a 30-day comment period ending November 16, 1992, and no comments were received.

The interim final rule relaxed the minimum size requirement for domestic shipments of Florida red seedless grapefruit to size 56 (3 1/16 inches in diameter) through November 7, 1993. The minimum size would have increased to size 48 (3 3/16 inches in diameter) on October 26, 1992, had the relaxation not been issued. The relaxation enabled handlers to ship size 56 red seedless grapefruit for the entire 1992-93 season.

The committee expects 1992-93 season fresh shipments of Florida seedless grapefruit to be considerably greater than average, and it reports that the external quality of the fruit is very good and fruit sizes are smaller than normal. The committee also expects that fresh market demand will be good for size 56 red seedless grapefruit during the entire 1992-93 season.

The relaxation was designed to enable Florida grapefruit shippers to continue shipping size 56 red seedless grapefruit to the domestic market consistent with current and anticipated demand during the entire 1992-93 season, and to maximize fresh market shipments. The relaxation was based on the committee's assessment of the maturity, flavor level, and size composition of this season's Florida red seedless grapefruit crop. The Florida seedless grapefruit shipping season normally begins in September and continues until the following July.

Minimum size requirements are designed to provide fresh markets with fruit of acceptable size and maturity, thereby maintaining consumer confidence in fresh Florida grapefruit. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of producers, packers, and consumers, and is expected to increase returns to Florida grapefruit growers.

Under the marketing order for Florida citrus, handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day, and up to 2 standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

This action reflects the committee's and the Department's appraisal of the need to finalize the relaxed requirements. The Department's view is that maintaining the relaxed requirements will have a beneficial impact on producers and handlers since it will permit Florida grapefruit handlers to continue shipping size 56 red seedless grapefruit to meet consumer needs consistent with this season's crop and market conditions.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that finalizing the interim final rule, as published in the *Federal Register* (57 FR 47255, October 15, 1992), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

§ 905.306 [Amended]

2. Accordingly, the interim final rule amending the provisions of § 905.306, which was published in the *Federal Register* (57 FR 47255, October 15, 1992), is adopted as a final rule.

Note: This section will appear in the annual Code of Federal Regulations.

Dated: December 21, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-31666 Filed 12-29-92; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 907

[Navel Orange Regulation 741]

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from December 18 through December 24, 1992. This action is being taken in response to a recent court action in which a temporary restraining order was granted which enjoined the Secretary from discontinuing weekly volume controls on the fresh sale of navel oranges.

EFFECTIVE DATE: Regulation 741 (7 CFR 907.1041) is effective for the period from December 18 through December 24, 1992.

FOR FURTHER INFORMATION CONTACT:

Christian D. Nissen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-5127; or Robert Curry, California Marketing Field Office,

Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, 2202 Monterey Street, suite 102B, Fresno, California, 93721; telephone: (209) 487-5901.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 907 (7 CFR part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the "Act."

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are

unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 130 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order and approximately 4,000 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000 and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities. The Administrator of AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Volume regulations have been issued under the California-Arizona navel orange marketing order during the 1992-93 season for the weeks ending November 19 through December 17. On

December 14, the Department concluded that volume regulations were not necessary for the remainder of the season to effectuate the declared policy of the Act.

On December 15, the Navel Orange Administrative Committee (Committee) met in Newhall, California, and recommended volume regulation for the week ending December 24 of 1,300 cars for Districts 1 and 3 (Central California and California Desert Valley and Arizona).

On December 17, a temporary restraining order (TRO) was granted in U.S. District Court (court) in Washington, DC which enjoined the Secretary from suspending weekly volume controls for California-Arizona navel oranges. At that time, a hearing for a preliminary injunction was scheduled for December 29, 1992.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because this action needs to be in effect by December 18 in order to comply with the December 17 court decision.

List of Subjects in 7 CFR Part 907

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR part 907 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 907.1041 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 907.1041 Navel orange regulation 741.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from December 18 through December 24, 1992, is established as follows:

District 1	District 2	District 3	District 4	Total
cartons/% (000) 1,238/95.2	cartons/% (000) open	cartons/% (000) 62/4.8	cartons/% (000) open	cartons (000) 1,300

Dated: December 20, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-31665 Filed 12-29-92; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 907

[Navel Orange Regulation 741, Amendment 1, and Navel Orange Regulation 742]

Navel Oranges Grown in Arizona and Designated Part of California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation amends Navel Orange Regulation 741 by increasing the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from December 18 through December 24, 1992, and establishes the quantity of California-Arizona navel oranges that may be shipped to domestic markets during the period from December 25 through December 31, 1992. This action is being taken in response to a recent court action in which a temporary restraining order was granted which enjoined the Secretary from

discontinuing weekly volume controls on the fresh sale of navel oranges.

EFFECTIVE DATE: Regulation 741, Amendment 1 (7 CFR 907.1041), is effective for the period from December 18 through December 24, 1992, and Regulation 742 (7 CFR 907.1042) is effective for the period from December 25 through December 31, 1992.

FOR FURTHER INFORMATION CONTACT:

Christian D. Nissen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-5127; or Robert Curry, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, 2202 Monterey Street, Suite 102B, Fresno, California, 93721; telephone: (209) 487-5901.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 907 (7 CFR part 907), as amended, regulating the handling of navel oranges grown in Arizona and designated part of California. This order is effective under

the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the "Act."

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order it not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the

petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of the use of volume regulations on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 130 handlers of California-Arizona navel oranges subject to regulation under the navel orange marketing order and approximately 4,000 navel orange producers in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of handlers and producers of California-Arizona navel oranges may be classified as small entities. The Administrator of AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Volume regulations were issued under the California-Arizona navel

orange marketing order during the 1992-93 season for the weeks ending November 19 through December 17. On December 14, the Department concluded that volume regulations were not necessary for the remainder of the season to effectuate the declared policy of the Act.

On December 17, a temporary restraining order (TRO) was granted in U.S. District Court (court) in Washington, D.C. which enjoined the Secretary from suspending weekly volume controls for California-Arizona navel oranges. At that time, a hearing for a preliminary injunction was scheduled for December 29, 1992.

On December 21, the Department issued Navel Orange Regulation 741 which established volume regulation at 1,300,000 cartons (general maturity) for Districts 1 and 3 (Central California and California Desert Valley and Arizona) for the week ending December 24. That action was recommended by the Navel Orange Administrative Committee (Committee) at a December 15 meeting in Newhall, California.

Also, on December 21, the Committee conducted a telephone vote and recommended an amendment to Navel Orange Regulation 741 to increase the total allotment for Districts 1 and 3 from 1,300,000 cartons to 1,500,000 cartons (1,428,000 cartons or 95.2 percent for District 1 and 72,000 cartons or 4.8 percent for District 3) for the week ending December 24.

On December 22, the Committee met in Newhall, California, and recommended volume regulation for the week ending December 31 for Districts 1, 2 (Southern California), and 4 (Northern California), as follows: 1,200,000 cartons of general maturity allotment for District 1, and early maturity allotments for District 2 and 4 at 71,454 cartons and 16,542 cartons, respectively. District 3 will not be regulated since about 70 percent of that

district's crop to date has been utilized and handlers would not be able to utilize their allotments.

Thus, this final rule amends Navel Orange Regulation 741 by increasing the allotment for the week ending December 24 to a total of 1,500,000 cartons and establishes volume regulation for Districts 1, 2, and 4 at the levels specified in the aforementioned for the week ending December 31.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because this action needs to be in effect by December 25 in order to comply with the December 17 court decision.

List of Subjects in 7 CFR Part 907

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 907 is amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR part 907 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 907.1041 is revised to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 907.1041 Navel Orange Regulation 741.

The quantity of navel oranges grown in California and Arizona which may be handled during the period from December 18 through December 24, 1992, is established as follows:

District 1	District 2	District 3	District 4	Total
Cartons/% (000)	Cartons/% (000)	Cartons/% (000)	Cartons/% (000)	Cartons (000)
1,428/95.2	Open	72/4.8	Open	1,500

3. Section 907.1042 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 907.1042 Navel Orange Regulation 742.

The quantity of navel oranges grown in California and Arizona which may be

handled during the period from December 25 through December 31, 1992, is established as follows:

District 1	District 2	District 3	District 4	Total
Cartons/% (000)	Cartons/% (000)	Cartons/% (000)	Cartons/% (000)	Cartons (000)
1,200/100	71,454	Open	16,542	1,287,996

Dated: December 23, 1992.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable Division.
[FR Doc. 92-31738 Filed 12-28-92; 10:35
am]
BILLING CODE 3410-02-M

7 CFR Part 910

[Lemon Regulation 767]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of California-Arizona lemons that may be shipped to fresh domestic markets during the period from December 27, 1992, through January 2, 1993. This action is being taken in response to a recent court action in which a temporary restraining order was granted which enjoined the Secretary from discontinuing weekly volume controls on the fresh sale of lemons.

EFFECTIVE DATE: Regulation 767 (7 CFR 910.1067) is effective for the period from December 27, 1992, through January 2, 1993.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-5127; or Martin Engeler, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (209) 487-5901.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 910 (7 CFR part 910), as amended, regulating the handling of lemons grown in California and Arizona. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, hereinafter referred to as the Act.

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil

Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities as well as larger ones.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 70 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,000 lemon producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities. The Administrator of AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities.

Volume regulations were issued under the California-Arizona lemon marketing order during the 1992-93 season for the weeks ending November 28 through December 19. On December 14, the Department concluded that volume regulations were not necessary for the remainder of the season to effectuate the declared policy of the Act.

On December 17, a temporary restraining order (TRO) was granted in U.S. District Court (court) in Washington, D.C. which enjoined the Secretary from suspending weekly volume controls for California-Arizona lemons. At that time, a hearing for a preliminary injunction was scheduled for December 29, 1992.

On December 21, the Department issued Lemon Regulation 766 which established volume regulation at 275,000 cartons. That action was recommended by the Lemon Administrative Committee (Committee) at a December 15, 1992, meeting in Newhall, California.

On December 22, the Committee met in Newhall, California, and recommended volume regulation for the week ending January 2, 1993, of 275,000 cartons.

Pursuant to 5 U.S.C. 553, it is found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* because this action needs to be in effect by December 27 in order to comply with the December 17 court decision.

List of Subjects in 7 CFR Part 910

Lemons, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.1067 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§910.1067 Lemon Regulation 767.

The quantity of lemons grown in California and Arizona which may be handled during the period from December 27, 1992, through January 2, 1993, is established at 275,000 cartons.

Dated: December 23, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92-31735 Filed 12-28-92; 10:35 am]

BILLING CODE 3410-02-M

7 CFR Parts 917 and 920

[Docket No. FV92-917-2FR]

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Services, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule the provisions of two interim final rules (without change) authorizing expenditures under Marketing Order 917 and authorizing expenditures and establishing an assessment rate under Marketing Order 920 for the 1992-93 fiscal period. Authorization of these budgets enables the Pear Commodity Committee and the Kiwifruit Administrative Committee (committees) to incur expenses that are reasonable and necessary to administer the programs. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATES: March 1, 1992, through February 28, 1993 (§ 917.255), and August 1, 1992, through July 31, 1993 (§ 920.209).

FOR FURTHER INFORMATION CONTACT: Britthany Beadle, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456, telephone (202) 690-0992.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement and Order No. 917 (7 CFR part 917), regulating the handling of fresh pears grown in California, and Marketing Order No. 920 (7 CFR part 920), regulating the handling of kiwifruit grown in California. The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action authorizes

expenditures for the 1992-93 fiscal year (March 1, 1992-February 28, 1993) under Marketing Order No. 917. Also, under the provisions of Marketing Order No. 920 now in effect, California kiwifruit is subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable kiwifruit handled during the 1992-93 fiscal period which began August 1, 1992. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 45 handlers of California pears under Marketing Order No. 917, and approximately 300 pear producers. There are approximately 100 handlers of California kiwifruit under Marketing Order No. 920, and approximately 850 kiwifruit producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as

those whose annual receipts are less than \$3,500,000. The majority of California pear and kiwifruit producers and handlers may be classified as small entities.

The budgets of expenses for the 1992-93 fiscal period were prepared by the committees, the agencies responsible for local administration of the marketing orders in their respective areas, and submitted to the Department for approval. The members of these committees are handlers and producers of California pears and for kiwifruit, producers and a non-industry member. They are familiar with the committee's needs and with the costs of goods and services in their local areas and are thus in a position to formulate appropriate budgets. The budgets were formulated and discussed in public meetings. Thus, all directly affected persons have had an opportunity to participate and provide input.

The Pear Commodity Committee met on June 26, 1992, and unanimously recommended 1992-93 expenditures of \$86,509, \$1,770 less than the previous season, be allocated from the committee's operating reserve funds to conduct several research projects and to provide for nominal committee expenses. The committee had \$86,509 in reserves as of March 1, 1992, an amount within the maximum authorized. Budgeted expenditures represent the entire carryover of reserve funds for the committee. No provision for assessments was made. In comparison, the 1991-92 fiscal period actual expenditures were \$1,157,620, and the assessment rate was \$0.25 per 36-pound carton or equivalent.

The absence of assessments and the difference between this budget and the budget for the 1991-92 fiscal period are due to the fact that the committee also voted to suspend the marketing order at the conclusion of this season. The budget is designed to utilize the total amount of funds remaining in the committee's reserve during this fiscal season.

Major committee expenditures estimated for 1992-93 are \$86,391 for research projects and \$118 for nominal committee expenses. This compares with major committee expenditures proposed for 1991-92, which were: Salaries and employee benefits, \$88,279; market development and promotion, \$1,140,501; and uncollected assessment accounts, \$5,000. Total reserves will be sufficient to cover all anticipated 1992-93 expenditures. Since the expenses will be financed from the committee's operating reserve, no additional costs will be imposed on handlers.

The Kiwifruit Administrative Committee met on July 22, 1992, and recommended 1992-93 marketing order expenditures of \$152,913, and an assessment rate of \$0.02 per tray or tray equivalent of kiwifruit. In comparison, 1991-92 marketing year budgeted expenditures were \$138,452, and the assessment rate was \$0.015 per tray. Assessment income for 1992-93 is estimated to total \$170,000 based on anticipated fresh domestic shipments of 8.5 million trays or tray equivalents of kiwifruit. This will be adequate to cover budgeted expenses. Funds in the reserve at the end of 1992-93 fiscal year, estimated at \$29,082, will be within the maximum permitted by the order of one fiscal year's expenses.

The major budget category for 1992-93 is \$109,170 for administrative, staff and field salaries.

The assessment rate recommended by the kiwifruit committee was derived by dividing anticipated expenses by expected shipments of kiwifruit. Because this rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the committee's expenses.

While this action will impose some additional costs on kiwifruit handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to kiwifruit producers. However, these costs will be offset by the benefits derived from the operation of the marketing order.

The Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

The interim final rules were published in the *Federal Register* on September 16, 1992, for 7 CFR part 917 (57 FR 42683) and October 6, 1992, for 7 CFR part 920 (57 FR 45973). These actions added § 917.255 to authorize expenses for the pear committee, and added § 920.209 to authorize expenses and establish an assessment rate for the kiwifruit committee. These interim final rules provided that interested persons could file comments through October 16, 1992, for M.O. 917 and November 5, 1992, for M.O. 920. No comments were received.

After consideration of all relevant material presented, including the committee's recommendations, and other available information, it is found that this final rule, as hereinafter set forth will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after

publication in the *Federal Register* (5 U.S.C. 553). The committees need to have sufficient funds to pay their expenses. Such expenses are incurred on a continuous basis. The 1992-93 fiscal period for the Pear Commodity Committee began on March 1, 1992, and the 1992-93 fiscal period for the Kiwifruit Administrative Committee began on August 1, 1992. Marketing Order 920 requires that any rate of assessment for a fiscal period apply to all assessable kiwifruit handled during that fiscal period. In addition, handlers are aware of these actions which were recommended by the committees at public meetings. No comments were received concerning the two interim final rules that are adopted in this action as a final rule without change.

List of Subjects

7 CFR Part 917

Pears, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 917 and 920 are amended as follows:

1. The authority citation for 7 CFR parts 917 and 920 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

PART 917—FRESH PEARS GROWN IN CALIFORNIA

2. Accordingly, the interim final rule adding § 917.255, which was published in the *Federal Register* (57 FR 42683, September 16, 1992) is adopted as a final rule.

Note: This action will not appear in the annual Code of Federal Regulations.

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

3. Accordingly, the interim final rule adding § 920.209, which was published in the *Federal Register* (57 FR 45973, October 6, 1992) is adopted as a final rule.

Note: This action will not appear in the annual Code of Federal Regulations.

Dated: December 21, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division
[FR Doc. 92-31661 Filed 12-29-92; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 920

[Docket No. FV-92-072]

California Kiwifruit; Establishment of Mail Balloting Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This interim final rule establishes mail balloting procedures for membership on the Kiwifruit Administrative Committee (committee). The California kiwifruit marketing order was amended to authorize the industry to nominate persons to serve on the committee through mail balloting. This action was recommended by the committee, the administrative agency, which works with the Department of Agriculture (Department) in administering the marketing order program for kiwifruit grown in California. This action is intended to increase industry wide participation of growers in the selection process by authorizing mail balloting.

DATES: This interim final rule becomes effective December 30, 1992. Comments that are received by January 29, 1993, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action to: Docket Clerk, F&V Division, AMS, USDA, P.O. Box 96456, room 2525-S, Washington, DC 20090-6456. Three copies of all written material should be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular business hours. Comments should reference the docket number and the date and page number of this issue of the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: Mark A. Hessel, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96458, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-3923.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 920 (7 CFR part 920), as amended, regulating the handling of kiwifruit grown in California, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and

has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome, and are easy for the public to understand, use or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations. This principle is articulated in President Bush's January 28, 1992, memorandum to agency heads, and in Executive Orders 12291 and 12498. The Department applies this principle to the fullest extent possible, consistent with law.

The Department has developed and reviewed this regulatory action in accordance with these principles. Nonetheless, the Department believes that public input from all interested persons can be invaluable to ensuring that the final regulatory product is minimally burdensome and maximally efficient. Therefore, the Department specifically seeks comments and suggestions from the public regarding any less burdensome or more efficient alternative that would accomplish the purposes described in this action. Comments suggesting less burdensome

or more efficient alternatives should be addressed to the agency as provided in this action.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

It is estimated that 100 handlers of California kiwifruit will be subject to regulation under the order during the current season, and there are approximately 700 kiwifruit producers in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms, which include kiwifruit handlers, are defined as those whose annual receipts are less than \$3,500,000. Most of the kiwifruit producers may be classified as small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504), the information collection provisions that are included in this interim final rule have been approved by the Office of Management and Budget (OMB) Number 0581-0149. It has been estimated that it will take an average of 20 minutes for each of the approximately 180 growers of kiwifruit to participate in the voluntary mail balloting process.

This interim final rule establishes mail balloting procedures for membership on the committee. The order was recently amended and changes became effective February 12, 1992 (57 FR 1217). The amendment changed provisions of the marketing order concerning the overall administration of the committee, including revisions of committee tenure requirements, adding authorization to change the terms of office, adding authorization for committee nominations to be conducted by mail, and adding authorization for late payment charges on delinquent handler assessments. The amendments are expected to improve the administration and operation of the program in order to

benefit all kiwifruit growers and handlers.

At a meeting held April 7, 1992, the committee recommended changes in the nomination procedures. Specifically, the committee recommended procedures to conduct committee nominations by mail to increase grower participation in the nomination process. This change is intended to reduce the administrative costs associated with conducting committee nomination meetings, and reduce costs incurred by individual growers in travelling to and attending the meetings. Establishment of mail balloting procedures is expected to have a positive impact on both large and small kiwifruit growers and handlers.

Currently, the committee is composed of 12 members, each of whom have an alternate. The committee consists of the following: One public member, one member from each of the eight grower districts, and three additional members from the three grower districts with the highest production.

Section 920.22 of the order provides for nominations of members to the committee by procedures conducted by the committee. Under this section, nominations for grower members may be conducted at grower meetings held in each of the order's eight geographic districts. These meetings must be held prior to July 15 of each year with new terms of office beginning on August 1 of each year. This section also authorizes the committee to recommend to the Secretary procedures for conducting nominations by mail. This interim final rule establishes procedures to allow the committee to conduct committee nominations using mail ballots.

To implement mail balloting, the committee recommended the following procedures. Each year that nominations are to be made for particular districts, the committee will request nominations by mail from all kiwifruit growers in the district involved, by a date to be specified by the committee. Nomination forms shall provide for names of nominees, as well as the nominating grower's name, address, telephone number, and signature. Candidates and growers may provide appropriate voluntary information on their candidates' qualifications to serve. Such information might include a background statement or resume. This information may be presented in the ballots submitted to growers.

After receiving nominations from growers, the committee with the Department, will evaluate the qualifications of nominees. If any nominees do not qualify, they will be so notified in writing. Submitted qualifying names will be listed on the

ballot. Mail ballots will be sent to all growers by a date to be specified by the committee. Each grower should complete and mail in one ballot for the one district. If the grower produces in more than one district the grower should vote in the one district for which the grower wishes to be represented. In addition, growers may nominate qualified individuals from the district involved other than those appearing on the ballot, by writing in such candidates' names on the mail ballots. Returned ballots will need to be postmarked by a date specified by the committee. The Department will tally the results. Candidates who receive the highest number of votes for each position will be presented to the Secretary for selection. If the vote is tied, another mail ballot will be sent to the affected districts, listing only candidates receiving the tie votes.

The above-described procedures will be utilized until the committee recommends to the Secretary additions to or modifications of these nomination procedures or the Department finds, through other sources, that such modifications are necessary.

Based on the above information, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities and that the action set forth herein will benefit producers and handlers of California kiwifruit.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* because:

(1) This nomination process should be available immediately to reduce the costs of administering the order;

(2) Kiwifruit growers and handlers are aware of this action which was unanimously recommended by the committee at a public meeting; and

(3) This interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements.
For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 920.122 is added to read as follows:

§ 920.122 Nomination procedures.

(a) The manner of nominating grower members and alternate members to the committee shall be as follows:

(1) The committee's mailing of an approved nomination form to all kiwifruit growers of record shall constitute notice of nominations. All eligible kiwifruit growers may nominate themselves or any other eligible kiwifruit grower to vacant committee positions for the nominee's district. Completed nomination forms shall be returned to the office of the committee by a date specified by the committee and approved by an agent of the Secretary. Nomination forms shall provide for names of nominees, as well as the nominating grower's name, address, telephone number, and signature. Incomplete nominations forms will not be considered valid.

(2) For each district involved in the current year's nominations, committee staff, with the Secretary's oversight, shall establish a slate of candidates with the names of all qualified nominees received. Persons submitting invalid nomination forms shall be notified of such by the committee. Within a reasonable time period, a ballot containing a slate of candidates shall be mailed to all growers of record within the respective district represented by such candidates. The committee shall provide a reasonable period of time to growers to cast votes on the candidates and return the completed ballots for tallying.

(3) To be eligible to vote, growers must be producing kiwifruit during the crop year nominations are held and within the district represented by the candidates on the ballot. A grower may only vote for candidates from one district and may only cast one ballot. Growers may also cast votes for eligible candidates who do not appear on the ballots by writing in the name of such candidates on the ballot. Each ballot shall provide for a voter eligibility certification which must include the

voter's name, address, telephone number, and signature, as well as the name(s) of all handlers which handled the current season's crop. At the discretion of the Secretary, the ballots may include other background information about each candidate.

(4) In order to be valid, ballots must be executed in accordance with the instructions set forth on the ballot, and are to be returned to the Secretary's agent who will tally the ballots with such assistance from the committee as may be requested by the agent. Such ballots shall be postmarked by a date specified by the committee and approved by an agent of the Secretary.

(5) The names of the persons receiving the highest total number of votes for a particular position shall be submitted to the Secretary as the nominees for such positions. In the event of a tie vote, a ballot containing only the names of the candidates receiving the tied vote shall be mailed to all growers in the affected district.

(b) In the event of a vacancy as specified in § 920.26, the committee shall utilize the same procedure as prescribed in § 920.122 (a)(1) through (a)(5) to fill such vacancy.

Dated: December 21, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.
[FR Doc. 92-31659 Filed 12-29-92; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Parts 932 and 944

[Docket No. FV-92-067FR]

Olives Grown in California and Olives Imported Into the United States; Revision of Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (Department) is adopting as a final rule the provisions of two interim final rules which relaxed size requirements established for California and imported olives. For California olives, this action allows "Large" size olives of the Ascolano, Barouni, and St. Agostino varieties to be used in the production of canned ripe whole or whole pitted olives. This action also makes adjustments in the Medium, Jumbo, Colossal, and Super Colossal size designations established for California olives, and revises the minimum size requirements in effect for California olives. This action is intended to help the California olive industry better meet current market

requirements, and make smaller olives of certain varieties available for use in the production of canned ripe olives. The changes were unanimously recommended by the California Olive Committee, which works with the Department in administering the marketing order program for olives grown in California. As required under section 8(e) of the Agricultural Marketing Agreement Act of 1937, this section also changes the olive import regulation, so that it conforms with the requirements established under the California olive marketing order. Thus, this final rule relaxes minimum size requirements established for imported olives of the Ascalano, Barouni, St. Agostino, and Obliza varieties. It also eliminates obsolete and unnecessary language in the import regulation.

EFFECTIVE DATE: January 29, 1993.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96458, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-8139.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 932 (7 CFR part 932), both as amended, regulating the handling of olives grown in California, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This final rule is also issued pursuant to section 8(e) of the Act, which provides that whenever specified commodities, including olives, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodity.

This final rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 603c(15)(A) of the Act, any handler subject to an order may file

with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Import regulations issued under the Act are based on those established under Federal marketing orders. Thus, this action should also have small entity orientation and should impact both small and large business entities in a manner comparable to rules issued under such marketing orders.

It is estimated that 6 handlers of California olives are subject to regulation under the order during the current season, and there are approximately 1,350 producers of California olives. There are approximately 25 importers of olives subject to the olive import regulation. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms, which include olive handlers and importers, are defined as those whose annual receipts are less than \$3,500,000. Most of the olive producers may be classified as small entities. None of the olive handlers may be classified as small entities. The majority of olive importers may be classified as small entities.

Interim final rules changing the domestic and import regulations were issued on August 6, 1992, and

published in the Federal Register on August 13, 1992 (57 FR 36351 and 57 FR 36354). These rules provided that interested persons could file comments through September 14, 1992. No comments were received. These rules changed § 932.152 of the order (7 CFR 932.152) and paragraphs (b)(3) and (b)(5) of the olive import regulation (7 CFR 944.401). The interim final rules were effective for the period August 6, 1992, through July 31, 1993.

Nearly all of the olives grown in the United States are produced in California. The growing areas are scattered throughout California, with most of the commercial production coming from inland valleys. In 1990, about 77 percent of the production came from the San Joaquin Valley and 23 percent from the Sacramento Valley. California olives are primarily used for canned ripe whole and whole pitted olives which are eaten out of hand as hors d'oeuvres or used as an ingredient in cooking and in salads. The canned ripe olive market is essentially a domestic market. Very few California olives are exported.

Olive production has fluctuated from a low of 24,200 tons during the 1972-73 crop year to a high of 146,500 tons during the 1982-83 crop year. The California Olive Committee (committee) indicated that 1990-91 production totalled about 126,872 tons. The various varieties of olives produced in California have alternate bearing tendencies with high production one year and low the next. The 1991-92 production totalled approximately 63,260 tons. Estimated 1992-93 production is 125,000 tons.

Section 932.152 of the rules and regulations in effect under the olive marketing order establishes outgoing regulations for packaged olives. Such regulations include the requirement that canned ripe whole and whole pitted olives must conform to seven established size designations, ranging from Small to Super Colossal. These size designations are defined in terms of average count ranges per pound for each of four variety groups. For example, the Small size is defined for Variety Group 2, except Obliza, to mean there are from 128 to 140 olives per pound, and the Colossal size for all variety groups is defined to mean that there are 41 to 50 olives per pound.

The size designations established in § 932.152 are related to the minimum size requirements for canned ripe whole and whole pitted olives that are established under § 932.52 of the order. These minimum size requirements include tolerances for undersized olives. For example, the minimum canning size

for whole or whole pitted olives of the Obliza variety is established at 1/121 pound. Under § 932.152, the smallest size designation authorized for Obliza olives is Medium, with a count range of 106 to 121 olives per pound. Thus, the minimum weight requirement under § 932.52 equals the weight of the smallest Obliza olives authorized for canning uses.

Section 932.52 also provides an allowance for olives that weigh less than the specified minimum weights. For the Obliza variety, up to 35 percent of the olives in lots of Medium size category olives may weigh less than 1/121 pound, including up to 7 percent of the olives in such lots which may weigh less than 1/135 pound. The 1/135 pound represents the mid-point of the Small size designation, which is defined to mean that there are between 128 and 140 olives per pound. The Small size designation is one size smaller than the Medium size designation, which is the smallest size designation authorized for Obliza olives for canning use. For Obliza olives that fall within authorized size designations larger than Medium, not more than 5 percent of the olives may weigh less than 1/121 pound.

The order also provides that olives that are smaller than those authorized for use as whole and whole pitted olives may be authorized for use in the production of limited use styles of olives, such as halved, segmented, sliced or chopped olives. Limited use sizes are specified in terms of minimum weights for individual olives in various size categories by variety groups. This is to recognize the different sizing characteristics of the individual varieties and types of California olives. Olives used in limited use styles are too small to be desirable for use as whole or whole pitted canned olives because their flesh-to-pit ratio is too low. However, they are satisfactory for use in the production of limited use styles. Authorizing the smaller-sized olives to be used for limited use styles makes more olives available for canning.

At a meeting held March 5, 1992, the committee, the agency responsible for local administration of the marketing order, recommended changes in the size requirements to become effective on or about August 1, 1992, when the 1992-93 season for California olives began. Section 932.52 of the order provides that the Secretary, on the basis of a recommendation of the committee or other available information, may change the sizes, tolerances or percentages specified in that section. Specifically, the committee recommended that the current size requirements be relaxed to allow "Large" size olives of the

Ascolano, Barouni, and St. Agostino varieties to be used in the production of canned ripe whole or whole pitted olives. The committee also recommended adjustments in the Medium, Jumbo, Colossal, and Super Colossal size designations established for all variety groups of California olives, and revisions in the minimum size requirements established in § 932.52 so that they are consistent with the revised size designations. Finally, the committee recommended changes in the count ranges established for limited use size olives.

Prior to the issuance of the interim final rule, olives of the Ascolano, Barouni, and St. Agostino varieties were required to be at least Extra Large in size to be used in the production of canned ripe whole or whole pitted olives. This action provides that smaller olives of such varieties (those falling in the Large size category) also be authorized for canning uses. This action is designed to increase the availability of Large sized canning olives, consistent with current market requirements.

This action also revises the average count ranges established in § 932.152(f). The Medium size, defined as having from 106 to 121 olives per pound, is redefined to mean that there are between 106 and 127 olives per pound. This change in the Medium size range will permit fruit which would otherwise be classified as Small sized fruit to be classified as medium sized fruit.

Additionally, the Jumbo size designation is being redefined to mean 47 to 60 olives per pound, compared with the previous range of 51 to 60 olives per pound. Likewise, the Colossal size designation is being redefined to mean 33 to 46 olives per pound, compared with 41 to 50 olives per pound, and the Super Colossal size will mean there are 32 or fewer olives per pound rather than 40 or fewer olives per pound.

The committee reports that the industry has an excess of Super Colossal sized fruit which has a more limited demand and is harder to sell than fruit of the Jumbo and Colossal sizes. The committee therefore recommended that the minimum number of fruit per pound established for the Super Colossal size designation be increased so that a greater volume of fruit will be available to be marketed in the more popular size designations. Adjustment of the size ranges will decrease inventories of larger size fruit, by permitting some of this fruit into the size ranges which are more in demand. This will allow producers and handlers to better meet current market requirements.

This rule also adds a new paragraph (h) to § 932.152 to revise the minimum size requirements, which are specified in § 932.52 of the order. The minimum size requirements that appear in § 932.52 of the order and that remain unchanged are also included in the new paragraph (h). These changes in the minimum size requirements are necessary so that they are consistent with the revised size designations discussed previously. For example, the minimum size requirement for olives of the Ascolano, Barouni, and St. Agostino varieties is being changed from 1/88 pound to 1/105 pound to reflect the authority to use Large sized fruit of such varieties for canning purposes.

Section 932.152 also contains average count ranges for limited use size olives. This action revises the average count range established for the Ascolano, Barouni, and St. Agostino varieties of olives to reflect the previously discussed revision to allow Large sized olives of these varieties to be used in the production of whole and whole pitted styles. The current count range of 91 to 140 olives per pound is being changed to a count range of 106 to 180 olives per pound.

As required under section 8(e) of the Act, this action makes conforming changes in the olive import requirements.

Currently, canned ripe olives, and bulk olives for processing into canned ripe olives, imported into the United States must meet certain minimum grade and size requirements specified in Olive Regulation 1 (7 CFR 944.401). All canned ripe olives are required to be inspected and certified prior to importation (release from custody of the United States Custom Service), and all bulk olives for processing into canned ripe olives must be inspected and certified prior to canning. "Canned ripe olives" means olives in hermetically sealed containers and heat sterilized under pressure, of two distinct types, "ripe" and "green-ripe", as defined in the current U.S. Standards for Grades of Canned Ripe Olives (7 CFR 52.3751-52.3764). The term does not include Spanish-style green olives. Any lot of olives failing to meet the import requirements may be exported or disposed of under the supervision of the Processed Products Branch of the Fruit and Vegetable Division, with the costs of certifying the disposal of the olives borne by the importer. Any person may import up to 100 pounds (drained weight) of canned ripe olives or bulk olives exempt from these grade and size requirements.

This final rule modifies paragraphs (b)(3) and (b)(5) of the olive import

regulation to relax the minimum size requirements established for imported canned whole ripe olives of the Ascolano, Barouni, St. Agostino, and Obliza varieties. It also eliminates obsolete and unnecessary language in the import regulation.

As previously indicated, the grade and size requirements contained in the olive import regulation are based on those in effect for olives grown in California under Marketing Order No. 932. The changes in the import requirements reflect the changes in the minimum size requirements established for domestically grown olives.

Based on the above information, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

In accordance with section 8(e) of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

List of Subjects

7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives and Oranges.

For the reasons set forth in the preamble, 7 CFR parts 932 and 944 are amended as follows:

1. The authority citation for 7 CFR parts 932 and 944 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

PART 932—OLIVES GROWN IN CALIFORNIA

2. Accordingly, the interim final rule amending the provisions of § 932.152 which was published in the *Federal Register* (57 FR 36351, August 13, 1992), is adopted as a final rule.

PART 944—FRUITS; IMPORT REGULATIONS

3. Accordingly, the interim final rule amending the provisions of § 944.401 which was published in the *Federal Register* (57 FR 36354, August 13, 1992), is adopted as a final rule.

Dated: December 21, 1992.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable Division.
[FR Doc. 92-31663 Filed 12-29-92; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 932 and 944

[Docket No. FV-91-460FR]

Olives Grown in California and Imported Olives; Final Rule for Limited Use Olives Grown in California and Olive Imports

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The U.S. Department of Agriculture (Department) is adopting as a final rule the provisions of two interim final rules that authorized the use of smaller sized California and imported olives in the production of limited use styles. Olives used in limited use styles are too small to be desirable for use as whole or whole pitted canned olives because their flesh-to-pit ratio is too low. However, they are satisfactory for use in the production of limited use styles such as wedges, halves, slices, or segments. This action will help the California olive industry and importers to meet the increasing market needs of the food service industry by making smaller olives available for use in the production of limited use styles.

EFFECTIVE DATE: This action is effective on January 29, 1993.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96458, room 2525-S, Washington, DC 20090-6456; telephone (202) 720-8139.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 932 (7 CFR part 932), both as amended, regulating the handling of olives grown in California, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule is also issued pursuant to section 8(e) of the Act, which provides that whenever specified commodities, including olives, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements as those in effect for the domestically produced commodity.

This final rule has been reviewed by the Department of Agriculture

(Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Import regulations issued under the Act are based on those established under Federal marketing orders. Thus, this action should also have small entity orientation and should impact both small and large business entities in a manner comparable to rules issued under such marketing orders.

It is estimated that 6 handlers of California olives are subject to regulation under the order during the current season, and there are approximately 1,350 olive producers in California. There are approximately 25 importers of olives subject to the olive

import regulation. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. Most of the olive producers may be classified as small entities and none of the olive handlers may be classified as small entities. The majority of olive importers may be classified as small entities.

Interim final rules modifying the marketing order and import regulations are issued on August 5, 1992, and published in the *Federal Register* on August 11, 1992 (57 FR 35745 and 57 FR 35747). These rules provided that interested persons could file comments through September 10, 1992. No comments were received. These rules modified section 932.153 of the order (7 CFR 932.153) and paragraph (b)(12) of the olive import regulation (7 CFR 944.401). These modifications are finalized in this action. The interim final rules became effective on August 1, 1992.

Nearly all of the olives grown in the United States are produced in California. The growing areas are scattered throughout California, with most of the commercial production coming from inland valleys. In 1990, about 77 percent of the production came from the San Joaquin Valley and 23 percent from the Sacramento Valley. California olives are primarily used for canned ripe whole and whole pitted olives, which are eaten out of hand as hors d'oeuvres or used as an ingredient in cooking and in salads. The canned ripe olive market is essentially a domestic market. Very few California olives are exported.

Olive production has fluctuated from a low of 24,200 tons during the 1972-73 crop year to a high of 146,500 tons during the 1982-83 crop year. The California Olive Committee (committee) indicated that 1990-91 production totalled about 126,872 tons. The various varieties of olives produced in California have alternate bearing tendencies with high production one year and low the next. Total production for 1991-92 totalled about 63,260 tons. Estimated production for the 1992-93 season is 125,000 tons. However, based on past production and marketing experience, the committee believes that handlers will need smaller sized olives during the 1992-93 crop year to meet market requirements for limited use styles of canned olives. Absent this action, olives which are smaller than those authorized for whole and whole pitted canning uses will have to be

disposed of by handlers into non-canning uses such as crushing into oil.

Paragraph (a)(3) of § 932.52 of the order for California olives, provides that processed olives smaller than the sizes prescribed for whole and whole pitted styles may be used for limited uses if recommended by the committee and approved by the Secretary. Until October 1, 1991, paragraph (a)(3) also prescribed minimum sizes, by variety group, which could be authorized for use in the production of limited use styles by the Secretary. The sizes were specified in terms of minimum weights for individual olives in various size categories by variety groups. This was to recognize the different sizing characteristics of the individual varieties and types of California olives. Olives used in limited use styles are too small to be desirable for use as whole or whole pitted canned olives because their flesh-to-pit ratio is too low. However, they are satisfactory for use in the production of limited use styles. Such styles include halved, segmented, sliced, and chopped canned ripe olives.

Effective October 1, 1991, certain non-canning size disposition requirements specified in § 932.51(a)(3) and minimum sizes authorized for limited use specified in § 932.52(a)(3) of the order were suspended. The committee may now recommend the use of olives for limited uses that are smaller than those previously permitted under the order. Minimum size and grade requirements may be recommended annually by the committee and approved by the Secretary. The sizes authorized herein are the same as those established for the 1991-92 crop year.

The minimum sizes which could previously be authorized for limited uses were established in a 1971 amendment to the order. Olives smaller than the prescribed minimum sizes which could be authorized for limited uses had to be disposed of for less profitable non-canning uses such as crushing for oil. Returns to producers are lower on smaller fruit used for such purposes. The use of smaller sized olives for limited use styles has been authorized in all but two crop years since the order was instituted in 1965.

Since the 1971 amendment, there have been substantial changes within the olive industry. In spite of the annual limited use authorization, in recent years the industry has not been able to meet market requirements for its products, especially the limited use styles used primarily by the food service industry. The demand for processed olives and for limited use styles is expected to continue to increase. At the same time, the industry has not been

able to increase production to meet market needs for canned ripe olives.

The committee conducted a study during the 1990-91 crop year to determine the feasibility of utilizing smaller sized olives in the production of limited use styles and to determine which sizes could be efficiently processed into such styles. All olive handlers within the industry participated in the study. All handlers reported that smaller sizes can be efficiently processed into limited use styles. Advanced technology in the form of better processing equipment is currently available. The new technology allows handlers to process smaller olives into limited use styles more efficiently than was possible in the past.

On December 2, 1991, the committee recommended the establishment of minimum sizes to be authorized for use in the production of limited use styles during the 1992-93 season. The size requirements are based on the study conducted by the committee during the 1990-91 crop year. The grade requirements are the same as established in recent seasons. The specific sizes for the variety groups are the minimum sizes, which are deemed desirable for use in the production of limited use styles at this time. As in past year, permitting the use of smaller olives in the production of limited use styles will allow handlers to take advantage of the strong market for halved, segmented, sliced, and chopped canned ripe olive. Handlers will be able to market more olives than will be permitted in the absence of this relaxation in size requirements. This additional opportunity is provided to maximize the use of the available olive supplies and facilitate market expansion, thereby increasing returns to producers. In the absence of this action, the smaller fruit would have to be disposed of for less profitable uses.

Canned ripe olives, and bulk olives for processing into canned ripe olives, imported into the United States must meet certain minimum grade and size requirements specified in Olive Regulation 1 [7 CFR 944.401]. All canned ripe olives are required to be inspected and certified prior to importation (release from custody of the United States Custom Service), and all bulk olives for processing into canned ripe olives must be inspected and certified prior to canning. "Canned ripe olives" means olives in hermetically sealed containers and heat sterilized under pressure, of two distinct types, "ripe" and "green-ripe", as defined in the current U.S. Standards for Grades of Canned Ripe Olives (7 CFR 52.3751-52.3764). The term does not include

Spanish-style green olives. Any lot of olives failing to meet the import requirements may be exported or disposed of under the supervision of the Processed Products Branch of the Fruit and Vegetable Division, with the costs of certifying the disposal of the olives borne by the importer. Any person may import up to 100 pounds (drained weight) of canned ripe olives or bulk olives exempt from these grade and size requirements.

This final rule modifies paragraph (b)(12) of the olive import regulation (7 CFR 944.401) to authorize the importation of bulk olives which do not meet the minimum size requirements established for olives for whole and whole pitted uses to be used in the production of limited use styles for the 1992-93 season which began August 1, 1992. This rule also establishes size requirements for such olives in paragraph (b)(12).

The grade and size requirements contained in the olive import regulation are based on those established for olives grown in California under the order. This action reflects the changes made in the requirements for olives for limited use styles grown in California.

The minimum sizes for limited use styles will be the same as those established for the 1991-92 season. The size requirements are specified in terms of minimum weights for individual olives in various variety groups and are the same for both domestic and imported olives. An extra category is contained in the import regulation to apply comparable requirements for varieties not grown domestically. The minimum sizes are as follows:

	Pound
Variety Group 1, except the Ascolano, Barouni, or St. Agostino varieties	1/105
Variety Group 1 of the Ascolano, Barouni, or St. Agostino varieties	1/180
Variety Group 2, except the Obliza variety	1/205
Variety Group 2 of the Obliza variety	1/180
Olives not identifiable as to variety or variety group	1/205

Each of the categories includes a 35 percent tolerance for olives weighing less than the specified minimum size.

This action is necessary because section 8(e) of the Act provides that when domestically produced olives are regulated under a Federal marketing order, imported olives must meet the same or comparable grade, size, quality, and maturity requirements. Thus, authorizing the use of smaller sized California olives in the production of limited use styles and establishing size regulations for such olives requires that the same or comparable regulations be issued for imported bulk olives.

In accordance with section 8(e) of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

Based on available information, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including information and recommendations submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR parts 932 and 944 are amended as follows:

PARTS 932 AND 944 [AMENDED]

1. The authority citation for 7 CFR parts 932 and 944 continue to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

§ 932.153 [Amended]

2. Accordingly, the interim final rule amending the provisions of § 932.153, which was published in the *Federal Register* (57 FR 35745, August 11, 1992), is adopted as a final rule.

§ 944.401 [Amended]

3. Accordingly, the interim final rule amending the provisions of § 944.401, which was published in the *Federal Register* (57 FR 35747, August 11, 1992), is adopted as a final rule.

Dated: December 21, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.
[FR Doc. 92-31664 Filed 12-29-92; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 945

[FV-92-0871FR]

Irish Potatoes Grown in Certain Designated Counties in Idaho, and Malheur County, Oregon; Establishment of Positive Lot Identification Procedures

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This action invites comments on the establishment of procedures for handlers who utilize positive lot identification (PLI) for lots of potatoes inspected and certified under the Idaho-Eastern Oregon potato marketing order. This action will: (1) Allow handlers to ship positive lot identified potatoes without a valid inspection certificate; (2) establish inspection procedures for positive lot identified potato lots that are not shipped within four days of inspection; and (3) requires handlers to report the quantities of potatoes shipped under PLI. These procedures will allow handlers to operate more efficiently when they use PLI as a method of inspection. This action was unanimously recommended by the Idaho-Eastern Oregon Potato Committee (Committee), which is responsible for local administration of the order.

DATES: Interim final rule effective December 30, 1992. Comments received by January 29, 1993 will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the *Federal Register*. Comments received will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Dennis West, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Northwest Marketing Field Office, 1220 S.W. Third Avenue, room 369, Portland, Oregon 97204; telephone (503) 326-2724, or Valerie L. Emmer, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2523-S, P.O. Box 96456, Washington,

DC 20090-6456; telephone (202) 205-2829.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement No. 98 and Marketing Order No. 945 (7 CFR part 945), both as amended, regulating the handling of Irish potatoes grown in certain counties in Idaho and Malheur County, Oregon. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (17 U.S.C. 601-674), hereinafter referred to as the Act.

The Department of Agriculture (Department) is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome, and are easy for the public to understand, use or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations. This principle is articulated in President Bush's January 28, 1992, memorandum to agency heads, and in Executive Orders 12291 and 12498. The Department applies this principle to the fullest extent possible, consistent with law.

The Department has developed and reviewed this regulatory proposal in accordance with these principles. Nonetheless, the Department believes that public input from all interested persons can be invaluable to ensuring that the final regulatory product is minimally burdensome and maximally efficient. Therefore, the Department specifically seeks comments and suggestions from the public regarding any less burdensome or more efficient alternative that would accomplish the purposes described in the proposal. Comments suggesting less burdensome or more efficient alternatives should be addressed to the agency as provided in this interim final rule.

This interim final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 66 handlers of Idaho-Eastern Oregon potatoes who are subject to regulation under the marketing order and approximately 2,200 producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$3,500,000, and small agricultural producers are defined as those whose annual receipts are less than \$500,000. A majority of the handlers and producers of Idaho-Eastern Oregon potatoes may be classified as small entities.

This interim final rule revises § 945.341 of the rules and regulations of the order. This action was unanimously recommended by the Idaho-Eastern Oregon Potato Committee (Committee), which is responsible for local administration of the marketing order program, at its June 9, 1992, meeting.

Currently, paragraph (d)(1) of § 945.341 provides that no handler shall handle potatoes unless the potatoes are inspected by either the Idaho Federal-

State Inspection Service or Oregon Federal-State Inspection Service and all shipments are covered by a valid inspection certificate. However, many handlers of Idaho-Eastern Oregon potatoes have been using positive lot identification (PLI) inspection procedures approved by the Fresh Products Branch of the Fruit and Vegetable Division. Positive lot identification provides that a specific load or lot can be linked to an official inspection certificate or numbered notesheet (Federal or Federal-State) that shows the produce has been officially sampled, inspected, and certified by a USDA authorized inspector. This can be accomplished by sealing conveyances with pre-numbered seals, pre-stamped identification tags inserted or attached to containers, stamping containers with official stamping devices, taping and/or tagging unitized pallets of products, or other methods if approved by the Fresh Products Branch. Copies of these procedures are attainable from Scott P. Brubaker, Federal Supervisor, Federal-State Inspection Service, Fresh Fruit and Vegetable Inspection, 2270 Old Penitentiary Road, Boise, Idaho 83712; telephone (208) 334-3830. Under these procedures, the lot can be tied to a particular inspection certificate, numbered notesheet or shipping clearance report. A numbered notesheet or inspection certificate is used by inspectors to list results of inspections completed during the day. A shipping clearance report is also used as evidence of inspection when previously inspected positive lot identified lots are subsequently re-inspected and found to meet marketing order regulations. The PLI procedures would make the inspection more valuable to the shipper because the shipper can more easily show that condition problems at destination more likely occurred during transit and not at the packing facility. In addition, the Committee is able to verify handler compliance with inspection and certification requirements more easily.

The rules and regulations currently require that no handler shall handle potatoes unless the potato shipments are covered by a valid inspection certificate. Because each lot is positive lot identified under Fresh Products Branch procedure, each lot can be linked directly to a valid inspection certificate, numbered notesheet, or shipping clearance report, the Committee recommended that valid copies of these documents not be required to accompany positive lot identified potatoes. Containers or lots of potatoes not shipped under PLI procedures would have to be accompanied with a

copy of a valid inspection certificate, numbered notesheet, or shipping clearance report. Such containers or lots have no identifying marks other than those placed on them by the shipper, and it is sometimes difficult to determine if all cartons in the lot have been inspected.

The second change will establish inspection procedures for positive lot identified potatoes not shipped within four days of inspection. Paragraph (d)(3) of § 945.341 currently provides that inspection certificates issued for potatoes which are to be shipped outside the production area must be issued within four days of shipment. Otherwise, another inspection is required. A new inspection will continue to be conducted on positive lot identified lots that are not shipped within a four-day period. If the subsequent inspection verifies that the handling regulation requirements, specified in paragraphs (a), (b), and (c) of § 945.341 have been met, a new inspection certificate, a new numbered notesheet, or a new shipping clearance report will be issued which references the original PLI number. A new PLI number will not be required on the lots. However, if the lot does not meet the requirements of the handling regulations, the lot will be required to be reconditioned in the presence of an authorized representative from the Idaho Federal-State Inspection Service or Oregon Federal-State Inspection Service prior to the close of the business day. If the lot is reconditioned to bring the lot into conformity with the handling regulation requirements, a new inspection certificate or new numbered notesheet must be issued and a new PLI number or modified PLI number will be applied. If the failing lot is not reconditioned prior to the close of business, all PLI numbers will be obliterated. This procedure will save time since handlers will not have to apply a new PLI number to the lots that are required to be reinspected and which continue to meet the handling regulation requirements.

The third change will require handlers to report to the Committee, either orally or in writing, the quantity of potatoes shipped under PLI procedures. Handlers are currently required under paragraph (d)(4) of § 945.341 to provide the Committee with destination zip codes of all potatoes handled, by permitting the Idaho Federal-State Inspection Service or Oregon Federal-State Inspection Service to review bills of lading upon inspection to determine the destination zip codes. Currently, these zip codes, along with the quantity of potatoes

shipped, are included on the inspection certificates which are received by the Committee. However, only the destination zip codes are included on the numbered notesheets which are used for PLI inspections. Inspectors inspecting potatoes under PLI will indicate a full day's inspection information on the inspection certificate or numbered notesheet and issue one inspection certificate for all lots inspected that day. Therefore, separate quantities of each shipment to a specific destination zip code will not be indicated on the numbered notesheet or the single inspection certificate. For the Committee to receive the quantities shipped to each destination zip code, it recommended that the handler inform the Committee either orally or in writing of the quantities so shipped under PLI procedures. The Committee needs this information to ascertain the exact quantities of PLI potatoes shipped to each destination zip code for greater statistical accuracy.

The information collection requirements that are contained in these regulations have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB Control No. 0581-0069.

On the basis of the foregoing, the Administrator of the AMS has determined that this rule will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendations submitted by the Committee and other available information, it is found that this interim final rule will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impractical, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because:

- (1) This action relaxes requirements on potato handlers;
- (2) This action was recommended at a public meeting;
- (3) The industry usually begins packing and shipping new crop potatoes by mid-August; and
- (4) This action provides for a 30-day comment period and all comments timely received will be considered prior to the finalization of this action.

List of Subjects in 7 CFR Part 945

Marketing agreements, Potatoes. Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 945 is amended as follows:

PART 945—IRISH POTATOES GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO, AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR part 945 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 945.341 is amended by revising paragraphs (d)(1), (d)(2), (d)(3), and (d)(4) to read as follows:

§ 945.341 Handling regulation.

(d) * * *

(1) No handler shall handle potatoes unless such potatoes are inspected by either the Idaho Federal-State Inspection Service or Oregon Federal-State Inspection Service and are covered and accompanied by a valid inspection certificate, numbered notesheet, or shipping clearance report: *Provided*, That a valid inspection certificate, numbered notesheet, or shipping clearance report is not required to accompany positive lot identified potatoes.

(2) Each lot shipped shall be accompanied by a copy of a valid inspection certificate, a numbered notesheet, shipping clearance report, or the lot must meet PLI requirements established by the Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service of the U.S. Department of Agriculture.

(3) Inspection certificates, numbered notesheets or shipping clearance reports for potatoes to be shipped outside the area of production must be issued within four days of such shipment. Otherwise, such potatoes, including lots that are positive lot identified, can only be shipped outside the area of production if a new inspection is performed to verify that the potatoes meet the requirements specified in paragraphs (a), (b), and (c) of this section. If the subsequent inspection verifies that the lot meets the requirements of paragraphs (a), (b), and (c) of this section, a new certificate, a new numbered notesheet, or a new shipping clearance report shall be issued and, if positive lot identified, shall reference the original PLI number, and a new PLI number need not be applied to the lot. However, if upon subsequent inspection, the lot does not meet the requirements specified in either paragraphs (a), (b), or (c) of this section, the lot shall be reconditioned in the presence of an authorized

representative of the Idaho Federal-State Inspection Service or Oregon Federal-State Inspection Service prior to the close of the business day. If the lot is reconditioned prior to the close of the business day, a new certificate, a new numbered notesheet, or a new shipping clearance report must be issued, and either a new PLI number must be applied to the lot or the original PLI number must be modified. If the PLI numbered lot is not reconditioned prior to the close of the business day, all PLI numbers must be obliterated. Any inspection certificate, numbered notesheet, or shipping clearance report issued upon a subsequent inspection, including when a lot is reconditioned, must be issued within four days of shipment of the potatoes outside the production area.

(4) Handlers shall provide the Committee with the destination zip codes of all potatoes handled by permitting the Idaho Federal-State Inspection Service or Oregon Federal-State Inspection Service to review the bills of lading upon inspection to determine the destination zip codes. The destination zip codes shall be included on the inspection certificates. The destination zip codes and the quantity shall be provided by the handler to the Committee on lots which are positive lot identified, either orally or in writing. Whenever potatoes are diverted to a different destination, the handler shall notify the Committee of the new destination zip code and quantity orally or in writing as soon as practicable.

Dated: December 21, 1992.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable Division.
[FR Doc. 92-31667 Filed 12-29-92; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Parts 955 and 987

[Docket No. FV92-955-1FIR]

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department is adopting as a final rule the provisions of two interim final rules (without change) authorizing expenditures and establishing assessment rates under Marketing Orders 955 and 987 for the 1992-93 fiscal period. Authorization of these budgets enables the Vidalia Onion Committee and the California Date Administrative Committee (Committees)

to incur expenses that are reasonable and necessary to administer the programs. Funds to administer these programs are derived from assessments on handlers.

DATES: September 16, 1992, through September 15, 1993 (\$ 955.205), and October 1, 1992, through September 30, 1993 (\$ 987.335).

FOR FURTHER INFORMATION CONTACT: Kellee J. Hopper (M.O. 987), California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, suite 102B, 2202 Monterey Street, Fresno, CA 93721, telephone 209-487-5901; John R. Toth (M.O. 955), Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883-2276, telephone 813-299-4770; or Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-720-9918.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement and Order No. 955 [7 CFR Part 955], regulating the handling of Vidalia onions grown in Georgia, and Marketing Agreement and Order No. 987 [7 CFR Part 987], both as amended, regulating the handling of dates produced or packed in Riverside County, California. The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, Vidalia onions and California dates are subject to assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable Vidalia onions handled during the 1992-93 fiscal period which began September 16, 1992, through September 15, 1993, and all assessable California dates handled during the 1992-93 crop year which began October 1, 1992, through September 30, 1993. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under

section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 250 producers of Georgia Vidalia onions under Marketing Order No. 955, and approximately 145 handlers. Also, there are approximately 135 producers of California dates under Marketing Order No. 987, and approximately 25 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of the producers and handlers may be classified as small entities.

The budgets of expenses for the 1992-93 fiscal period were prepared by the Vidalia Onion Committee and the California Date Administrative Committee, the agencies responsible for local administration of the orders, and submitted to the Department for approval. The members of these Committees are handlers and producers of Georgia Vidalia onions and California dates. They are familiar with the Committees' needs and with the costs for goods and services in their local areas and are thus in a position to

formulate appropriate budgets. The budgets were formulated and discussed in public meetings. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rates recommended by the committees were derived by dividing anticipated expenses by expected shipments of Georgia Vidalia onions and California dates. Because these rates will be applied to actual shipments, they must be established at rates that will provide sufficient income to pay the Committees' expenses.

The Vidalia Onion Committee met July 23, 1992, and unanimously recommended a 1992-93 budget of \$338,497. This is \$145,697 more than the previous year. The size of the increase in the budget is due in large part to increased marketing activity, which appears necessary to the Committee as the crop size continues to grow. Increases include: \$4,000 for furniture/equipment lease and maintenance, \$6,177 for office overhead, \$14,255 for contract management, \$22,950 for research, and \$127,965 for marketing. These budget increases will be partially offset by decreases of \$1,000 for office supplies and \$2,000 for postage/courier, and the elimination of the supplemental marketing category for which \$27,300 was budgeted last year.

The Committee also unanimously recommended an assessment rate of \$0.10 per 50-pound bag, the same as last year. This rate, when applied to anticipated shipments of 2,094,517 50-pound bags, will yield \$209,451 in assessment income. This, along with \$14,000 in interest income and \$115,046 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the Committee's authorized reserve at the beginning of the 1992-93 fiscal period, estimated at \$134,588, will be within the maximum permitted by the order of three fiscal periods' expenses.

The California Date Administrative Committee met on July 16, 1992, and recommended 1992-93 crop year expenditures of \$495,500 and an assessment rate of \$1.40 per hundredweight of assessable dates shipped under M.O. 987. In comparison 1991-92 crop year budgeted expenditures were initially established at \$479,400 and the assessment rate was established at \$1.40 per hundredweight. Subsequently, the Committee recommended an increase in expenditures of \$155,000 for additional advertising and promotion expenditures, for a total budget of \$634,400.

Included in 1992-93 budgeted expenditures is an operating budget of \$121,703, with a 20% surplus account allocation, for a net operating budget of \$97,363. The major expenditure item this year is \$392,470 for continuation of the Committee's market promotion program. The industry is faced with an oversupply of product dates and the Committee considers this program necessary to stimulate sales. The remaining expenditures are for program administration and are budgeted at about last year's amounts.

Income for the 1992-93 season is expected to total \$495,500. Such income consists of \$490,000 in assessments based on shipments of 35,000,000 assessable pounds of dates at \$1.40 per hundredweight, and \$5,500 in interest income.

The Committee also recommended that any unexpended funds or excess assessments from the 1991-92 crop year be placed in its reserve. The Committee's reserve is well within the maximum amount authorized under the order.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Interim final rules were published in the *Federal Register* on October 6, 1992, for 7 CFR part 955 (57 FR 45974), and 7 CFR part 987 (57 FR 45975). Those interim final rules added \$955,205 and \$987,335, authorized expenses, and established assessment rates for the Committees. Those rules provided that interested persons could file comments through November 5, 1992. No comments were received.

It is found that the specified expenses for the marketing orders covered in this rulemaking are reasonable and likely to be incurred and that such expenses and the specified assessment rates to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* (5 U.S.C. 553) because the Committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis. The 1992-93 fiscal periods for the programs began on September 16, 1992, for Georgia Vidalia onions and October 1, 1992, for

California dates, and the marketing orders require that the rates of assessment for the fiscal periods apply to all assessable onions and dates handled during the fiscal periods. In addition, handlers are aware of these actions which were recommended by the Committees at public meetings and published in the *Federal Register* as interim final rules. No comments were received concerning the two interim final rules that are adopted in this action as a final rule without change.

List of Subjects

7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

7 CFR Part 987

Dates, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 955 and 987 are hereby amended as follows:

1. The authority citation for 7 CFR Parts 955 and 987 continue to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

Note: This section will not appear in the Code of Federal Regulations.

2. For the reasons set forth in the preamble, the interim final rule adding § 955.205 which was published at 57 FR 45974 on October 6, 1992, is adopted as a final rule without change.

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

Note: This section will not appear in the Code of Federal Regulations.

3. For the reasons set forth in the preamble, the interim final rule adding § 987.335 which was published at 57 FR 45975 on October 6, 1992, is adopted as a final rule without change.

Dated: December 21, 1992.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable Division.
[FR Doc. 92-31662 Filed 12-29-92; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 982

[Docket No. FV92-982-1]

Filberts/Hazelnuts Grown in Oregon and Washington; Establishment of Interim and Final Free and Restricted Percentages for the 1992-93 Marketing Year**AGENCY:** Agricultural Marketing Service, USDA.**ACTION:** Interim final rule with request for comments.

SUMMARY: This interim final rule establishes interim and final free and restricted percentages for domestic inshell filberts/hazelnuts for the 1992-93 marketing year under the Federal marketing order for filberts/hazelnuts grown in Oregon and Washington. The percentages allocate the amounts of domestically produced filberts/hazelnuts which may be marketed in domestic, export and other outlets. The percentages are intended to stabilize the supply of domestic inshell filberts/hazelnuts in order to meet the limited domestic demand for such filberts/hazelnuts and provide reasonable returns to producers. This action was recommended by the Filbert/Hazelnut Marketing Board (Board), which is the agency responsible for local administration of the order.

DATES: This interim final rule is effective on December 30, 1992. Comments which are received by January 29, 1993 will be considered prior to any finalization of the interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the *Federal Register* and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson, Marketing Specialist, Northwest Marketing Field Office, Fruit and Vegetable Division, Agricultural Marketing Service, USDA, 1220 SW Third Ave., room 369, Portland, OR 97204; telephone (503) 326-2724 or Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2524-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-2170.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 982 (7 CFR part 982), both as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

The Department of Agriculture (Department) is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome, and are easy for the public to understand, use or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations. This principle is articulated in President Bush's January 28, 1992, memorandum to agency heads, and in Executive Orders 12291 and 12498. The Department applies this principle to the fullest extent possible, consistent with law.

The Department has developed and reviewed this regulatory proposal in accordance with these principles. Nonetheless, the Department believes that public input from all interested persons can be invaluable to ensuring that the final regulatory product is minimally burdensome and maximally efficient. Therefore, the Department specifically seeks comments and suggestions from the public regarding any less burdensome or more efficient alternative that would accomplish the purposes described in this action. Comments suggesting less burdensome or more efficient alternatives should be addressed to the agency as provided in this rule.

This rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file

with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction, in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,000 producers of filberts/hazelnuts in the production area and approximately 25 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$3,500,000. The majority of handlers and producers of filberts/hazelnuts may be classified as small entities.

The Board's recommendation and this interim final rule are based on requirements specified in the order. This rule will establish the amount of inshell filberts/hazelnuts that can be marketed in domestic markets. The domestic outlets for this commodity are characterized by limited demand, and the establishment of interim and final free and restricted percentages will benefit the industry by promoting stronger marketing conditions and stabilizing prices and supplies, thus improving grower returns.

The Board is required to meet prior to September 20 of each marketing year to compute an inshell trade demand and preliminary free and restricted

percentages, if the use of volume regulation is recommended during the season. The order prescribes formulas for computing the inshell trade demand, as well as preliminary, interim final, and final percentages. The inshell trade demand establishes the amount of inshell filberts/hazelnuts the market can utilize throughout the season, and the percentages release the volume of filberts/hazelnuts necessary to meet the inshell trade demand. The preliminary percentages provide for the release of 80 percent of the inshell trade demand. The interim final percentages release 100 percent of the inshell trade demand. The final free and restricted percentages release an additional 15 percent of the average of the preceding three years' trade acquisitions of inshell filberts/hazelnuts for desirable carryout.

The inshell trade demand equals the average of the preceding three "normal" years' trade acquisitions of inshell filberts/hazelnuts, rounded to the nearest whole number. The Board may increase such estimate by no more than 25 percent, if market conditions warrant such an increase.

The preliminary free and restricted percentages make available portions of the filbert/hazelnut crop which may be marketed in domestic inshell markets (free) and exported, shelled, or otherwise disposed of (restricted) early in the 1992-93 season. The preliminary free percentage is expressed as a percentage of the total supply subject to regulation and is based on preliminary crop estimates. The majority of domestic inshell filberts/hazelnuts are marketed in October, November, and December. By November, the marketing season is well under way.

At its August 26, 1992, meeting, the Board announced preliminary free and restricted percentage of 9 percent and 91 percent, respectively, to release 80 percent of the inshell trade demand. The purpose of releasing only 80 percent of the inshell trade demand under the preliminary percentage is to guard against underestimates of crop size. The preliminary restricted percentage is 100 percent minus the free percentage.

On or before November 15, the Board must meet again to recommend interim percentages and final percentages. The Board uses current crop estimates to calculate the interim final and final percentages. The interim percentages are calculated in the same way as the preliminary percentages and release 100 percent of the inshell trade demand previously computed by the Board for the marketing year. Final free and restricted percentages release an additional 156 percent of the average of

the preceding three years' trade acquisitions to ensure adequate carryover into the following season. The final free and restricted percentages must be effective at least 30 days prior to the end of the marketing year (July 1 through June 30), or earlier, if recommended by the Board and approved by the Secretary. In addition, revisions in the marketing policy can be made until February 15 of each marketing year. However, the inshell trade demand can only be revised upward.

In accordance with other provisions, the Board met on November 12, 1992, reviewed and approved an amended marketing policy and recommended the establishment of interim free and restricted percentage of 11 percent and 89 percent, and final free and restricted percentages of 13 percent and 87 percent. The Board also recommended that the final percentages be effective on May 1, 1993, which is 60 days prior to the end of season. The marketing percentages are based on the industry's final production estimates and release of 3,354 tons of the domestic inshell market from the 1992 crop. The Oregon Agricultural Statistics Service provided an early estimate of 26,000 tons total production for the Oregon and Washington area. However, a handler survey conducted by the Board provided a more current estimate of 26,796 tons total production for the area. Therefore, the Board voted to unanimously accept the more current estimate of 26,796 tons.

The marketing percentages are based on the Board's production estimates and the following supply and demand information for the 1992-93 marketing year:

	Tons
Inshell supply:	
(1) Total production (Filbert/Hazelnut Marketing Board handler survey estimate)	26,796
(2) Less substandard, farm use (disappearance)	1,758
(3) Merchantile production (the Board's adjusted crop estimate)	25,038
(4) Plus undeclared carryin as of July 1, 1992, subject to regulation	984
(5) Supply subject to regulation (Item 3 plus Item 4)	26,022
Inshell trade demand:	
(6) Average trade acquisition of inshell filberts for three prior years	4,022
(7) Increase to encourage increased sales (5 percent)	201
(8) Less declared carryin as of July 1, 1992, not subject to regulation	1,472
(9) Adjusted Inshell Trade Demand	2,751

	Tons	
(10) 15 percent of the average trade acquisitions of inshell filberts for three prior years (Items 6)	603	
(11) Adjusted Inshell Trade Demand plus 15 percent (Item 9 plus Item 10)	3,354	
Percentages	Free	Restricted
(12) Interim percentages (Item 9 divided by Item 5) x 100	11	89
(13) Final percentages (Item 11 divided by Item 5) x 100	13	87

In addition to complying with the provisions of the marketing order, the Board also considers the Department's 1982 "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (Guidelines) when making its computations in the marketing policy. This volume control regulation provides a method to collectively limit the supply of inshell filberts/hazelnuts available for sale in domestic markets. The Guidelines provide that this primary market have available a quantity equal to 110 percent of recent years' sales in those outlets before secondary market allocations are approved. This provides for plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with oversupply situations. An additional increase of 5 percent (201 tons) has been included in the calculations used in determining the inshell trade demand. The established final percentages, which release 100 percent of the inshell trade demand, will make available 3,354 tons from the 1992 crop plus 1,472 tons of declared carryin which is 120 percent of prior years' sales, thus exceeding the goal of the Guidelines.

Based on the above, the Administrator of the AMS has determined that this interim final rule will not have a significant economic impact on a substantial number of small entities. Written comments, timely received in response to this action, will be considered before finalization of this rule.

After consideration of all available information, it is found that the establishment of interim and final free and restricted percentages, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the

effective date of this action until 30 days after publication in the **Federal Register** because: (1) The 1992-93 marketing year began July 1, 1992, and the percentages established herein apply to all merchantable filberts/hazelnuts handled from the beginning of the crop year; (2) handlers are aware of this action, which was recommended at an open Board meeting, and need no additional time to comply with these percentages which release more filberts/hazelnuts than the preliminary percentages; and (3) interested persons are provided a 30-day comment period in which to respond. All comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing, agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 982 is amended as follows:

1. The authority citation for 7 CFR part 982 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

Subpart—Grade and Size Regulation

2. Section 982.242 is added to read as follows:

Note: This section will not be published in the annual Code of Federal Regulations.

§ 982.242 Free and restricted percentages—1992-93 marketing year.

(a) The interim free and restricted percentages for merchantable filberts/hazelnuts for the 1992-93 marketing year shall be 11 and 89 percent, respectively.

(b) The final free and restricted percentages for merchantable filberts/hazelnuts for the 1992-93 marketing year shall be 13 and 87 percent, respectively. These percentages will be effective on May 1, 1993.

Dated: December 21, 1992.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable Division.
[FR Doc. 92-31658 Filed 12-29-92; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1944

RIN 0575-AB36

Section 502—Rural Housing Loan Policies, Procedures and Authorizations

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) is amending its regulations to clarify that the appraisal fee will be included in the loan as an authorized loan purpose and to authorize a rural housing loan to exceed the market value of the security by the appraisal fee. The intended effect is to provide timely processing of home ownership loans for low- and very low-income families.

EFFECTIVE DATE: This action is effective on December 30, 1992 through September 30, 1993.

FOR FURTHER INFORMATION CONTACT: Ray McCracken, Senior Loan Specialist, Farmers Home Administration, USDA, Room 5334-S, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone (202) 720-1474.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined to be nonmajor because there is no substantial change from practices under existing rules that would have an annual effect on the economy of \$100 million or more. There is no major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies; or geographical regions. Furthermore, there are no significant adverse effects on competition, employment, productivity, innovation, or in the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Discussion

Prudent lending practices dictate that appraisers should produce an objective opinion about the market value of a property. This objectivity may be compromised if the appraiser is involved in deciding to extend credit that is secured by such property. Under Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act

of 1989, it is intended that appraisals conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as promulgated by the Appraisal Standards Board of the Appraisal Foundation. These appraisal standards will be mandatory December 31, 1992. The Executive Office of The President, Office of Management and Budget (OMB), directed credit Agencies through OMB Circular A-129 to comply with USPAP. Under the Conduct Section of the Ethics Provision of USPAP, the appraiser must perform appraisal assignments with objectivity, independence, and without accommodation of personal interests.

In order for FmHA to institute an appraisal process that institutes prudent lending practices and complies with the conduct provisions of USPAP, it must separate the duties of the appraiser and loan approval official. FmHA has instituted an appraisal process that does this and it is in the public interest that this process continues to ensure that the security value of a property is determined independently from a determination of the applicant's eligibility to purchase the property. To ensure the separation of loan approval and appraisal functions FmHA established a policy of hiring private appraisers. However, because of a reduction in the funds available for expenses such as the hiring of private appraisers, FmHA can no longer continue to pay for private appraisers for housing applicants without affecting its ability to deliver services to its borrowers and grantees. By instituting a fee for appraisal services that will be included in the loan amount, FmHA will have the resources to continue its appraisal process in compliance with the conduct provision of USPAP by December 31, 1992, and have funds for other expenses which cannot be recovered from applicants, borrowers, or grantees. To minimize the impact of the appraisal fee on borrowers, the Agency is authorizing the loan to exceed the security value of the property purchased by the amount of the appraisal fee.

Section 534 of the Housing Act of 1949 requires that all rules and regulations issued pursuant to that Act must be published for public comment. The one exception is for a rule or regulation issued on an emergency basis. This action is not published for proposed rule making since it involves an emergency situation, because without the resources to obtain appraisals, FmHA would have to delay the processing of loans for the purchase of homes by low- and very low-income families or otherwise cut back its services to applicants/borrowers and

grantees in other areas. By implementing the regulations as a final rule for the 1993 fiscal year only, it will permit FmHA to expeditiously process loans to low- and very low-income families to purchase safe, sanitary, and decent housing. Concurrently with publication of this rule, FmHA is publishing a proposed rule which would make these emergency changes for subsequent fiscal years.

Section 510 of the Housing Act of 1949 requires that fee appraisers be used in any county or district office where loan applications can not be expeditiously processed and to include the cost of the appraisal services in the loan or grant. By including the fee in the loan, when necessary, and amortizing the loan over 33 to 38 years the borrower's payment for this cost will be minimal and repayment ability should not be affected.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this proposed action does not constitute a major Federal Action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Civil Justice Reform

This document has been reviewed in accordance with Executive Order (EO) 12778. It is the determination of FmHA that this action does not unduly burden the Federal Court Systems in that it meets all applicable standards provided in section 2 of the EO.

Programs Affected

This program is listed in the catalog of Federal Domestic Assistance under 10.410, Low-Income Housing Loans.

Intergovernmental Consultation

For the reason set forth in the final rule and related Notice to 7 CFR part 3015, subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

List of Subjects in 7 CFR Part 1944

Home improvement, Loan programs—housing and community development, Low and moderate income housing—rental, Mobile homes, Mortgages, Rural housing, Subsidies.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1944—HOUSING

1. The authority citation for part 1944 continues to read as follows:

Authority: 7 U.S.C. 1989, 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 7 CFR 2.70.

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

2. In § 1944.3 paragraph (b)(9) is suspended from December 30, 1992, through September 30, 1993, a new paragraph (b)(9) is added, and paragraph (b)(14) is revised to read as follows:

§ 1944.3 Loan purposes.

* * * * *

(b) * * *

* * * * *

(9) Pay incidental expenses such as fees for tax monitoring service, legal, title clearance, loan closing, architectural, appraisal, surveying, environmental, and other technical services and incidental expenses authorized in Exhibit F of this subpart.

* * * * *

(14) Provide living area for all members of the applicant's household including "extended family" as provided in § 1944.16(b).

3. In § 1944.17 the introductory text of paragraph (a) is suspended from (date of publication in the Federal Register) through September 30, 1993, and a new introductory text of paragraph (a) is added to read as follows:

§ 1944.17 Maximum loan amounts.

(a) An RH loan to buy or build a dwelling may be made up to the market value of the security plus an appraisal fee (the appraisal fee can only be added to the market value of the security through September 30, 1993) less the unpaid principal balance and past-due interest of any other liens against the security property for:

* * * * *

Dated: November 9, 1992.

La Verne Ausman,
Administrator, Farmers Home
Administration.

[FR Doc. 92-31672 Filed 12-29-92; 8:45 am]
BILLING CODE 3410-07-M

Animal and Plant Health Inspection Service

9 CFR Part 11

[Docket No. 91-106]

Horse Protection Inspection Guidelines

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Horse Protection regulations by revising the procedures to be followed by Designated Qualified Persons in conducting inspections at horse shows, exhibitions, and sales or auctions. This action is warranted to provide practicable inspection procedures that protect horses under the Horse Protection Act.

EFFECTIVE DATE: January 29, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. R. L. Crawford, Director, Animal Care Staff, Regulatory Enforcement and Animal Care, APHIS, USDA, room 565, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7833.

SUPPLEMENTARY INFORMATION:

Background

The practice known as "soring" is the causing of suffering in show horses to affect their performance in the show ring. In 1970, Congress passed the Horse Protection Act (15 U.S.C. 1821-1831), referred to below as the Act, to eliminate the practice of soring, by prohibiting the showing or selling of sored horses. Exercising our rulemaking power under the Act, we issued regulations published at 9 CFR part 11, referred to below as the regulations, that prohibit devices and methods that might sore horses. In 1979, in response to an amendment to the Act, we established regulations under which show managements must, to avoid liability for any sore horses that are shown, hire individuals trained to conduct preshow inspections. These individuals, referred to as Designated Qualified Persons (DQP's), are trained and licensed under industry-sponsored DQP programs that we certify and monitor.

The requirements for DQP licensing are set forth in § 11.7 of the regulations. As part of the licensing process, prospective DQP's are trained in procedures we have established for examining a horse prior to exhibition or sale. The inspection procedures include, but are not limited to, the examination by palpation of the horse's pasterns and visual examination of the horse.

On June 6, 1991, we published in the Federal Register (56 FR 26043-26044,

Docket No. 91-025) a proposal to amend the regulations to revise the procedures to be followed by DQP's in conducting inspections at horse shows, exhibitions, and sales or auctions.

Comments on the proposed rule were required to be received on or before July 8, 1991. We received 49 comments. The comments were from State officials, horse industry associations, a veterinary medical association, and the general public. Forty-four commenters supported the proposal as written. One commenter opposed the rule in its entirety. The remainder of the commenters suggested changes to the proposed provisions, as discussed below.

Inspection of Horses

We proposed to amend § 11.21(a)(2) to leave it to the discretion of the DQP whether to examine the rear limbs of all horses inspected after showing, and the rear limbs of horses examined preshow or on the showgrounds. However, we proposed to continue to require examination of the rear limbs of horses exhibiting lesions on the rear legs or unusual movement of the rear legs. In discussing our proposal not to require rear limb examination of all horses after showing, we cited the apparent low incidence of rear limb soreness and the potential danger to DQP's from such examinations.

One commenter recommended that no fewer than all first-placed horses have their rear limbs inspected for edema, hair loss, scars, thickening of tissue, open lesions and bleeding in the rear limbs. Another stated that the existing rule requiring rear-limb examination in postshow inspections is the minimum necessary for effective enforcement of the Act. The commenter disagreed that inspecting the rear limbs of horses is potentially dangerous, because, according to the commenter, a properly trained DQP does not face any discernible risk of injury from the inspection. We are making no changes based on these comments. As we discussed in our proposal, the incidence of rear-limb soreness does not justify requiring examination of all horses after showing, especially since the objective of soreness is to get more weight on the hind limbs and elevate the front. We consider the regulations as proposed to be adequate to detect whatever soreness might be done to the rear limbs of horses. Further, when examining the rear limbs of a horse, or doing anything around its rear limbs, there is always a danger of being kicked. Although there is less danger for experienced individuals, we believe rear-limb examination in post show inspections

should not be required unless absolutely necessary.

One commenter requested that we clarify what constitutes "unusual movement," stating that training for the "big lick" show gait deliberately strives for an exaggerated, arguably "unusual," overstride in the rear limbs. We are making no changes based on this comment. We consider it clear that the regulations refer to movement that is unusual in comparison to the gait customarily used at shows.

We also proposed to amend § 11.21(a)(3) to require (1) that all action devices, pads and other equipment be observed and/or examined to assure they are in compliance with the regulations, and (2) that all horses examined postshow (which includes all Tennessee Walking Horses and racking horses tied first in their class or event), and all horses examined preshow that are not clearly in compliance, have their pads and action devices weighed and/or measured.

Two commenters opposed the change, stating that a visual examination is not accurate. These commenters recommended that all action devices be weighed and all pads measured. We are making no changes based on these comments. An experienced observer can visually detect questionable pads or devices. When detected, questionable pads and devices will be weighed and/or measured.

We proposed to amend § 11.21(b) to (1) provide that the DQP inspect horses no more than three classes ahead of the time the inspected horses are to be shown, except in smaller shows (those with fewer than 150 horses), where a horse would have to be inspected no more than two classes ahead of the time it is to be shown; and (2) amend the regulations to allow the rider, groom, and trainer to be present in the holding area, and to specify that DQP's and Animal and Plant Health Inspection Service (APHIS) representatives may also be present in the holding area.

One commenter recommended that the requirement for inspection three classes ahead be applied to all shows, not just to those with 150 or more horses. Another commenter opposed our proposed change, stating that numbing agents are sometimes used on sore horses before they are brought to inspection, and that these agents would wear off in time to produce the desired effect in the show ring if inspections are carried out three classes ahead. The commenter stated that maintaining the current requirement for inspections one class ahead would stop this abuse of the regulations. A third commenter stated that the proposed change is based on a

perception that the current regulations will delay shows and rush DQP's and not on actual evidence that delays will occur. The commenter also expressed concern that requiring inspections three classes ahead would increase the number of people and horses in the holding area, making observation difficult and increasing the possibility of horses being sores after inspection.

We are making no changes based on these comments. We consider the proposal to offer the best balance between undesirable time constraints on trainers and DQP's and long waiting periods between inspection and entering the show ring. Although changing to three classes ahead will likely increase the number of individuals in the holding area compared to the number allowed under the one-class limit, we are confident it will not create an unmanageable situation. With regard to any use of numbing agents that might be occurring, we will gather additional information on the use of numbing agents and take whatever action we consider appropriate.

A number of commenters addressed the issue of who should be permitted in the holding area after a horse is inspected. One commenter recommended that we retain the current provisions permitting only the rider and one other person in the holding area. Several commenters requested that, in addition to the rider, groom, and trainer, other individuals, including private veterinarians, be allowed in the holding area. One commenter requested that the regulations specify that when the rider and trainer are the same person, no individuals other than that person and the groom be permitted in the holding area.

We are making no changes based on these comments. We continue to consider it appropriate to permit a rider, trainer, and groom—one individual more than currently permitted—in the holding area, specifying that DQP's and APHIS representatives may also be present, to allow for proper preparation of a horse for showing. We do not consider it appropriate or necessary to allow any additional individuals in the holding area. In order to allow for adequate monitoring of the holding area by DQP's, the number of individuals in that area must be limited to the minimum necessary. We also do not consider it necessary to reduce the number of individuals in the holding area in cases where a rider might also be a trainer. Identifying such situations would be difficult, and would be unnecessary in limiting the individuals

in the holding area to a manageable number.

Required Number of DQP's

We proposed to require that at least two DQP's be designated and appointed when more than 150 horses are entered in a show. Several commenters stated that inspecting more than 100 horses would be unworkable for one DQP because most horses are entered in more than one class, which the commenters estimated could result in approximately 400 entries to be inspected. Other commenters stated that the threshold should be raised to 200 horses before two DQP's are required. One of these commenters suggested as an alternative that we consider the number of horses shown during each 24-hour period at a multi-night show, rather than the total number of horses entered at the show.

Each horse entered in a class represents one entry—i.e., if the same horse is entered in three classes, that represents three entries. A DQP must inspect a horse each time it is entered. We expect that at most one-night shows approximately 100 horses will enter 2–4 classes, resulting in approximately 200–400 entries. At multi-day shows, the same horse that entered three classes in a one-night show may enter those three classes each day, or, alternatively, enter them over a period of several days. Based on this projection, one DQP should be able to handle 150 horses without being overworked in either situation. However, based on our experience enforcing the regulations, we do not agree that one DQP would be able to conduct adequate inspections at shows at which close to 200 horses are entered. Finally, although we agree that the number of horses entered each day at a multi-day show may be fewer than the total number of horses entered in the show, for practical scheduling purposes, we consider it necessary to base the number of DQP's needed on the total number of horses entered at a show.

One commenter recommended that we allow time for the current regulations to be tested before we amend them. We are making no changes based on this recommendation. We developed our proposal in response to evidence presented to us by the horse industry, which we continue to consider compelling enough to warrant the changes as proposed.

A number of commenters raised issues outside the scope of our proposal, including APHIS staffing levels, a recommendation that action devices be prohibited, and a recommendation that tackboxes and towels be prohibited from the holding area. Although we are making no changes to our proposal

based on these comments, we will carefully consider them and, if warranted, take appropriate action.

Based on the rationale set forth in the proposal and in this document, we are adopting the provisions of the proposed rule as a final rule.

Executive Order 12291, Executive Order 12278 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291 and Departmental Regulation 1512–1, and have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

The change in inspection procedures will provide for practicable, safe inspection procedures. We expect that the implementation of these regulations will not cause a significant change in the number of shows inspected by DQP's.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 11

Animal welfare, Horses, Humane animal handling, Soring of horses.

Accordingly, 9 CFR part 11 is amended as follows:

PART 11—HORSE PROTECTION REGULATIONS

1. The authority citation for part 11 continues to read as follows:

Authority: 15 U.S.C. 1823, 1824, 1825, and 1828; 44 U.S.C. 3506.

§ 11.20 [Amended]

2. In § 11.20, paragraph (c), the number "100" is removed and the number "150" is added in its place.

§ 11.21 [Amended]

3. In § 11.21, paragraph (a)(2), the fifth sentence is revised to read as follows: "The DQP may examine the rear limbs of all horses inspected after showing, and may examine the rear limbs of any horse examined preshow or on the showgrounds when he deems it necessary, except that the DQP shall examine the rear limbs of all horses exhibiting lesions on, or unusual movement of, the rear legs."

§ 11.21 [Amended]

4. In § 11.21, paragraph (a)(3), the second sentence is revised to read as follows: "All action devices, pads, and other equipment shall be observed and/or examined to assure that they are in compliance with the regulations. All such equipment on horses examined postshow, and on horses examined preshow that are not clearly in compliance, shall be weighed and/or measured."

§ 11.21 [Amended]

5. In § 11.21, paragraph (b), the first sentence is revised to read as follows: "The DQP shall inspect horses no more than three classes ahead of the time the inspected horses are to be shown, except that, in shows with fewer than 150 horses, the DQP shall inspect horses no more than 2 classes ahead of the time the inspected horses are to be shown."; and the last sentence is revised to read as follows: "Only the horse, the rider, the groom, the trainer, the DQP(s) and APHIS representatives shall be allowed in the designated area."

Done in Washington, DC, this 21st day of December 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92–31493 Filed 12–29–92; 8:45 am]

BILLING CODE 3410–34–M

9 CFR Part 94

[Docket No. 92-137-1]

Pork and Pork Products From Denmark; Restrictions on Importations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the regulations to add certain restrictions concerning the importation into the United States of pork and pork products from Denmark. The imposition of additional import restrictions is a necessary response to conditions which make possible the commingling of swine vesicular disease-contaminated pork or pork products with disease-free pork or pork products in Denmark. This action protects against the introduction into the United States of swine vesicular disease.

DATES: Interim rule effective December 30, 1992. Consideration will be given only to comments received on or before March 1, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92-137-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. John W. Cougill, Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, room 758, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7834.

SUPPLEMENTARY INFORMATION:**Background**

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to prevent the introduction of various diseases, including swine vesicular disease (SVD).

Denmark is included in the list of countries declared free of swine vesicular disease, in § 94.12(a). We are now adding Denmark to the list of countries in § 94.13 that, although free of SVD, are subject to special restrictions on the importation into the United States of their pork and pork products.

The countries listed in § 94.13(a) are subject to special restrictions because at least one of the following conditions applies:

- (1) They supplement their national pork supply by importing fresh, chilled, or frozen pork from countries where swine vesicular disease is considered to exist;
- (2) They have a common land border with countries in which swine vesicular disease exists; or
- (3) They import pork or pork products from countries which have certain trade practices that are less restrictive than are acceptable for importation into the United States.

Special Restrictions

The special restrictions placed on the importation of pork and pork products from specified countries in § 94.13 generally state that:

- (1) All pork and pork products, except those treated in accordance with § 94.12(b)(1)(i), shall have been prepared only in an inspected establishment that is eligible to have its products imported into the United States under the Federal Meat Inspection Act and be accompanied by a foreign meat inspection certificate.
- (2) Unless the pork or pork products are treated in accordance with one of the procedures described in § 94.12(b), the pork or pork products must be accompanied by an additional certificate issued by a full-time salaried veterinary official of the agency in the national government responsible for the health of the animals within that country.

As a member of the European Community (EC), Denmark is required to accept pork products from other EC countries under conditions less restrictive than those required by the United States. Denmark also shares a common border with Germany, which is a country in which SVD is considered to exist. As a result, pork and pork products produced in Denmark may be commingled with the fresh, chilled, or frozen meat of animals from a country or countries where SVD exists, presenting a risk that pork and pork products exported from Denmark to the United States could be contaminated and introduce SVD.

We are, therefore, taking this action to restrict the importation of pork and pork products from Denmark, in accordance with § 94.13.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without

prior opportunity for public comment. Immediate action is necessary to prevent the importation into the United States of pork and pork products from Denmark that could be contaminated with SVD. Less restrictive pork and pork product import requirements in Denmark mean that the commingling of SVD-contaminated meat and meat products with SVD-free products could occur in the country.

Failure to restrict the importation of pork and pork products at this time increases the risk of SVD-contaminated meat or meat products being introduced into the United States.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 for making it effective upon publication in the **Federal Register**. We will consider comments that are received within 60 days of publication of this interim rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Official records indicate that 66.2 million pounds of fresh chilled and frozen pork were imported from Denmark in 1989, the most recent year for which figures are available. Exports to the United States account for approximately two percent of the total Danish pork production. Danish imports accounted for less than one percent of the 16,571 million pounds of pork consumed in the United States during 1989. Moreover, officials in Denmark should be able to issue the certificates required under the regulations in

§ 94.13 for pork and pork products shipped from Denmark to the United States, since they issue certificates for pork and other meat and animal products under a similar requirement in § 94.11. Section § 94.11 restricts the importation of meat and other animal products from specified countries declared free of foot-and-mouth disease that supplement their national meat supply with the importation of fresh, chilled, or frozen meat of ruminants or swine from countries that are designated as infected with rinderpest or foot-and-mouth disease, or that have a common land border with countries designated as infected with rinderpest or foot-and-mouth disease, or that import ruminants or swine from countries designated as infected with rinderpest or foot-and-mouth disease under conditions less restrictive than would be acceptable for importation into the United States. The few importers affected by the new regulations can continue to import pork and pork products from Denmark, subject to the added restrictions. Alternatively, they can purchase those products from other sources.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.), the information collection or recordkeeping requirements included in this proposed rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579-0015.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1308; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.13 [Amended]

2. In § 94.13, the first sentence of the introductory text is amended by adding "Denmark," immediately after "Chile,"

Done in Washington, DC, this 21st day of December 1992.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 92-31492 Filed 12-29-92; 8:45 am]

BILLING CODE 3410-34-M

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R-0787]

Capital; Capital Adequacy Guidelines

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule with request for comments.

SUMMARY: The Federal Reserve is amending its risk-based capital guidelines to lower from 100 percent to 50 percent the risk weight assigned to certain loans to builders to finance the construction of presold residential (1- to 4-family) properties. This interim rule implements section 618(a) of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (RTCRIA). In February 1992, the Federal Reserve, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), sought public comment on a proposal to implement section 618(a) of RTCRIA through a change to the commercial bank Consolidated Reports of Condition and Income (Call Report). It was suggested in the comments that section 618(a) of the RTCRIA be implemented through an amendment to the Federal banking agencies' risk-based capital rules and guidelines instead of to the Call Report. The Board has determined to adopt this

suggestion as an alternative to the original proposal. The Board has adopted this change to the risk-based capital guidelines on an interim basis in order to provide interested parties an opportunity to comment on this approach.

DATES: This interim rule is effective as of December 30, 1992. Comments must be received by January 29, 1993.

ADDRESSES: Comments should be addressed to Mr. William Wiles, Secretary of the Board, Board of Governors of the Federal Reserve System, 20th and Constitution Avenue NW., Washington, DC 20551, or delivered to room B-2223, Eccles Building, between 8:45 am and 5 pm. Comments may be inspected in room B-1122 between 9 am and 5 pm, except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT:

Rhoger H. Pugh, Assistant Director (202/728-5883), Norah M. Barger, Manager (202/452-2402), and Robert E. Motyka, Senior Financial Analyst (202/452-3621), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

The international bank capital standards (Basle Accord)¹ place all assets into the 100 percent risk category unless the asset specifically qualifies for a preferential risk category. In this regard, the Accord allows member countries at their discretion to assign a 50 percent risk weight to loans secured by residential property provided that such loans are fully secured by mortgages on residential property that is rented or is occupied (or is intended to be occupied) by the borrower and the risk weight is applied in accordance with strict prudential criteria. The U.S. risk-based capital guidelines, which implement the Basel Accord, assign 1- to 4-family residential mortgages that

¹ The Basel Accord is a risk-based capital framework that was proposed by the Basel Committee on Banking Regulations and Supervisory Practices and endorsed by the central bank governors of the Group of Ten (G-10) countries in July 1988. The Committee is comprised of representatives of the central banks and supervisory authorities from the G-10 countries (Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Sweden, Switzerland, the United Kingdom, and the United States) and Luxembourg.

meet certain criteria to the 50 percent risk category. In order to qualify for a 50 percent risk weight, a loan secured by a 1- to 4-family residential property must be a first lien; must be made in accordance with prudent underwriting standards, including a conservative loan-to-value ratio; must be performing in accordance with its original terms; and must not be more than 90 days past due or carried in nonaccrual status. The U.S. risk-based capital guidelines assign loans to builders to finance the construction of residential properties that have been presold to purchasers who intend to occupy the property to the 100 percent risk category on the basis of the perceived inherent riskiness of these loans. Under the Basle Accord such loans could, at national discretion, be assigned a 50 percent risk weight.

After the risk-based capital guidelines were adopted, the Federal Reserve along with the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) reexamined the issue of the capital treatment of residential mortgages. Specifically, the banking agencies considered the appropriateness of applying a 50 percent risk weight to certain loans to builders to finance the construction of residential properties that have been presold to qualifying individuals.

Before the agencies proceeded with a proposal, Congress enacted the RTCRRRA on December 12, 1991. Section 618(a) of the Act requires the Federal banking agencies to provide for a risk weight of 50 percent in their regulations and guidelines for any single family residential construction loan that meets the following criteria:

- (1) The loan is for the construction of 1- to 4-family residential property;
- (2) The bank has sufficient documentation, as may be required by the appropriate Federal banking agency, to demonstrate the intent and ability of the buyer to purchase the property;
- (3) The purchaser provides to the builder a nonrefundable deposit in an amount determined by the appropriate Federal banking agency, but not less than 1 percent of the principal amount of the mortgage; and
- (4) The loan satisfies prudent underwriting standards as established by the appropriate Federal banking agency.

In order to effect a lower risk weight for these loans in conformance with the legislation, the agencies decided to propose expanding the definition of loans "secured by 1- to 4-family residential properties" contained in the commercial bank Call Report to include

presold residential construction loans that meet certain criteria. In this regard, the FFIEC published for comment on February 3, 1992, a proposal to add to the list of loans that are secured by 1- to 4-family residential properties, and exclude from the list of loans made for the purpose of construction and land development, loans that are "made in accordance with sound lending principles to builders with substantial project equity for the construction of 1- to 4-family residences that have been presold under firm contracts to purchasers who have obtained firm commitments for permanent qualifying mortgage loans and have made substantial earnest money deposits."

For the Federal Reserve and the FDIC, the proposed definitional change would have resulted in lowering the risk weight for presold 1- to 4-family residential construction loans because these agencies' risk-based capital guidelines assign loans that meet the Call Report definition of 1- to 4-family residential mortgages to the 50 percent risk category. The definitional change would have had no effect on the risk weight for presold residential construction loans held by national banks or thrifts since neither the OCC's nor the OTS's risk-based capital rules reference the Call Report definition for loans secured by 1- to 4-family residential properties. As a result, both the OCC and OTS were required to amend their risk-based capital rules to effect the lower risk weight. The OTS amendment became effective May 13, 1992, while the OCC amendment became effective October 5, 1992.

Once a final version of the Call Report change was agreed to, the Federal Reserve intended to make conforming changes to the Consolidated Financial Statements for Bank Holding Companies (Y-9C Report).

Comments Received

Comments were received from 41 public respondents. These included one multinational, one regional, and twenty-nine community banking organizations; one thrift association; one government-sponsored entity; seven trade associations; and one member of the public. Overall, 32 commenters, or approximately 78 percent of the total respondents, agreed with the proposal. They expressed the view that the definitional change and reassignment of these loans to a lower risk category was fair and consistent with the riskiness inherent in these types of residential real estate loans.

The nine commenters that opposed the FFIEC's proposal did so on the grounds that, in their view, the

perceived reporting burden to implement the proposal did not justify the merits of the outcome. One of these commenters stated it would agree with the proposal if the Call Report change would be optional.

It was suggested in the comments that the Federal Reserve implement the provisions of section 618(a) of the RTCRRRA by amending the risk-based capital guidelines rather than by changing the definition of loans secured by 1- to 4-family residential properties contained in the Call Report. One commenter, the multinational banking organization, noted that this approach would be more appropriate and much simpler for banking organizations to implement than a regulatory reporting change.

The FFIEC proposal requested specific comment on builder equity and purchaser earnest money standards, "including the most appropriate way to define and compute a builder's project equity and the percentages or amounts of builder equity and purchaser earnest money that should be at risk." Eleven comment letters suggested definitions and amounts for "builder equity" and "purchaser earnest money deposit." The amounts suggested for builder's equity ranged from 10 percent to 75 percent of the contract price. In addition, a number of commenters offered specific suggestions on what that percentage should be based on, such as cost of land acquisition or hard costs of construction. Suggested amounts for substantial earnest money deposits ranged from 1 percent to 20 percent.

Amendment To The Risk-Based Capital Guidelines

Based upon discussions with the other Federal banking agencies and the public comments received, the Board is amending the risk-based capital guidelines for state member banks and bank holding companies to state that loans secured by 1- to 4-family residential properties eligible for the 50 percent risk category for risk-based capital purposes include "loans to builders with substantial project equity for the construction of 1- to 4-family residences that have been presold under firm contracts to purchasers who have obtained firm commitments for permanent qualifying mortgage loans and have made substantial earnest money deposits." In order to be assigned a 50 percent risk weight, such loans, like other loans for 1- to 4-family residences, would have to be made in accordance with prudent underwriting standards, including a conservative loan-to-value ratio; to be performing in accordance with their original terms;

and to not be 90 days or more past due or carried in nonaccrual status. This change to the risk-based capital guidelines would have the effect of including in the 50 percent risk category presold residential construction loans that RTCRRIA requires to be included in this category.

The Board notes that the statute specifies that the agencies may establish prudent underwriting standards for presold 1- to 4-family residential construction loans accorded a 50 percent risk weight. In this regard, the agencies expect that institutions will apply a 50 percent risk weight to loans to builders for 1- to 4-family residential property construction only if the bank has obtained sufficient documentation that the buyer of the home intends to purchase the home (*i.e.*, has a legally binding written sales contract) and has the ability to obtain a mortgage loan sufficient to purchase the home (*i.e.*, has a firm written commitment for permanent financing of the home upon completion), so long as the following additional criteria are met:

(A) The purchaser is an individual(s) who intends to occupy the residence and is not a partnership, joint venture, trust corporation, or any other entity (including an entity acting as a sole proprietorship) that is purchasing one or more of the homes for speculative purposes.

(B) The builder must incur at least the first 10 percent of the direct costs (*i.e.*, actual costs of the land, labor, and material) before any drawdown is made under the construction loan and the construction loan may not exceed 80 percent of the sales price of the presold home.²

(C) The purchaser has made a substantial "earnest money deposit" of no less than 3 percent of the residence's sales price and that deposit must be subject to forfeiture if the purchaser terminates the sales contract.

(D) The earnest money deposit must be held in escrow by the bank financing the builder or by an independent party in a fiduciary capacity and the escrow agreement must provide that, in the event of default arising from the

cancellation of the sales contract by the buyer, the escrow funds must first be used to defray any costs incurred by the lending bank.

Section 618(a) requires the agencies to take action within 120 days of enactment of the RTCRRIA to permit the different capital treatment of the type of housing loans discussed above. As suggested in the comments received, the Board has decided to implement section 618(a) by adopting revisions to the risk-based capital guidelines directly rather than changing the Call Report and Y-9C Report provisions. The effect on the calculation of capital for state member banks and bank holding companies of amending the guidelines is substantially the same as the effect of revising the Call Report and the Y-9C Report, and will satisfy the requirements of section 618(a). The Board adopted the change to the risk-based capital guidelines as an interim rule, rather than a final rule, however, in order to provide interested parties an opportunity to comment on this alternative approach. The adoption of an interim rule will permit state member banks and bank holding companies to take advantage of a lower risk weight for presold residential construction loans effective immediately. The Board will revise the rule as required to address comments received during the thirty-day comment period.

Regulatory Flexibility Act Analysis

The Federal Reserve Board does not believe that adoption of this amendment would have a significant economic impact on a substantial number of small business entities in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) In that regard, the amendment would reduce certain regulatory burdens on bank holding companies. In addition, because the risk-based and leverage capital guidelines generally do not apply to bank holding companies with consolidated assets of less than \$150 million, this amendment will not affect such companies.

List of Subjects

12 CFR Part 208

Accounting, Agriculture, Banks, banking, Confidential business information, Currency, Federal Reserve System, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies,

Reporting and recordkeeping requirements, Securities.

For the reasons set forth in the preamble, and pursuant to the Board's authority under section 5(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(b)), and section 910 of the International Lending Supervision Act of 1983 (12 U.S.C. 3909), the Board is amending 12 CFR parts 208 and 225 as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

1. The authority citation for part 208 is revised to read as follows:

Authority: Sections 9, 11(a), 11(c), 19, 21, 25, and 25(a) of the Federal Reserve Act, as amended (12 U.S.C. 321-338, 248(a), 248(c), 461, 481-486, 601, and 611, respectively); sections 4 and 13(j) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1814 and 1823(j), respectively); section 7(a) of the International Banking Act of 1978 (12 U.S.C. 3105); sections 907-910 of the International Lending Supervision Act of 1983 (12 U.S.C. 3906-3909); sections 2, 12(b), 12(g), 12(i), 15B(c) (5), 17, 17A, and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78b, 78(b), 78(g), 78(i), 78o-4(c) (5), 78q, 78q-1, and 78w, respectively); section 5155 of the Revised Statutes (12 U.S.C. 36) as amended by the McFadden Act of 1927; and sections 1101-1122 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 3310 and 3331-3351); 12 U.S.C. 93a, 161, 1818, 3907, 3909, Sec. 618, Pub. L. 102-233, 105 Stat. 1761 (Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991).

2. Appendix A to part 208 is amended by revising footnote 35 to read as follows:

APPENDIX A TO PART 208—[Amended]

* * * * *

III. Procedures for Computing Weighted-Risk Assets and Off-Balance-Sheet Items

* * * * *

C. Risk Weights

* * * * *

3. * * * 35

² Under the agencies' 1992 real estate underwriting standards regulation and guidelines, as a general matter, institutions may extend loans for the construction of 1- to 4-family residences with loan-to-value ratios (LTV) of up to 85 percent. These guidelines, which implement section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991, become effective on March 19, 1993. While these guidelines permit institutions to make presold residential construction loans with LTV ratios that exceed 80 percent, such loans would not qualify for the 50 percent risk category. Rather, they should be assigned to the 100 percent risk category.

³⁵ Loans that qualify as loans secured by one- to four-family residential properties are listed in the instructions to the commercial bank call report. In addition, for risk-based capital purposes, loans secured by one- to four-family residential properties include loans to builders with substantial project equity for the construction of one- to four-family residences that have been presold under firm contracts to purchasers who have obtained firm commitments for permanent qualifying mortgage loans and have made substantial earnest money deposits.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for part 225 is revised to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1843(c)(8), 1844(b), 3106, 3108, 3907, 3909, 3310, and 33313351.

2. Appendix A to Part 225 is amended by revising footnote 38 to read as follows:

APPENDIX A TO PART 225 - [Amended]

III. PROCEDURES FOR COMPUTING WEIGHTED-RISK ASSETS AND OFF-BALANCE-SHEET ITEMS

C. Risk Weights

3 * * * 38

Board of Governors of the Federal Reserve System, December 22, 1992

William W. Wiles,

Secretary of the Board

[FR Doc. 92-31551 Filed 12-29-92; 8:45 am]

BILLING CODE 3210-01-F

12 CFR Parts 208 and 225

[Regulations H and Y; Docket No. R-0756]

Capital; Capital Adequacy Guidelines

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is revising its risk-based capital guidelines for state member banks and bank holding companies to lower the risk weight assigned to certain collateralized transactions to a level more commensurate with the minimal risks involved. The revision is consistent with the international bank capital standards.

EFFECTIVE DATE: December 30, 1992.

FOR FURTHER INFORMATION CONTACT:

Roger H. Pugh, Assistant Director (202/728-5883), Norah M. Barger, Manager (202/452-2402), Robert E. Motyka, Senior Financial Analyst (202/452-3621), or Alfred D. Teuscher, Supervisory Financial Analyst (202/452-3007), Division of Banking Supervision and Regulation, Board of Governors of

the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Street, NW., Washington, DC 20551.

Discussion

SUPPLEMENTARY INFORMATION:

Under the international bank capital standards (the Basle Accord),¹ claims collateralized by cash and OECD central government securities may be assigned to the zero percent risk category. However, the U.S. Federal banking agencies exercised national discretion, as permitted under the Basle Accord, to assign such claims to the 20 percent risk category. This decision has had the effect of essentially limiting the zero percent risk category to cash assets and claims (including securities) on OECD central governments and claims directly and unconditionally guaranteed by such governments. Claims secured by cash or securities issued or guaranteed by OECD central governments are assigned to the next highest risk category, i.e., 20 percent, in order to take into account the operational risks that are present in most conventional secured lending arrangements.²

In some instances, however, the application of a 20 percent risk weight to very low-risk collateralized transactions—such as certain indemnified securities lending arrangements—could place U.S. banking organizations at a competitive disadvantage to foreign banks subject to the Basle Accord that are applying a zero percent risk weight to such transactions. In an effort to address this disparity in treatment and to arrive at a capital treatment for such transactions that is more commensurate with the minimal risks entailed, the Board reviewed the possibility of assigning a zero percent risk weight to claims collateralized by cash or OECD central government securities or U.S.

Government agency securities³ that met certain criteria. The criterion particularly considered in this regard was the maintenance on a daily basis of a positive collateral margin, which was intended to mitigate significantly the risks normally associated with collateralized transactions.

As a consequence of this review, on April 10, 1992, the Board issued for public comment a proposal to modify the risk-based capital guidelines that would lower the risk weight for collateralized transactions meeting certain criteria from the 20 percent risk category to the zero percent risk category. In this regard, the Board proposed that a claim collateralized by cash on deposit in the banking organization or by OECD central government or U.S. Government agency securities could be assigned to the zero percent risk category, provided that a positive collateral margin is maintained on a daily basis, fully taking into account any change in the banking organization's exposure (to the obligor or counterparty) under the claim in relation to the market value of the collateral held in support of that claim. If the market value of the collateral received from the obligor or counterparty falls below 100 percent of the amount of the banking organization's exposure under such a collateralized claim, the borrower must immediately post enough additional collateral to cover any shortfall and maintain a positive margin.

The Board sought specific comment on whether additional criteria should be required in order to better ensure that only truly low-risk collateralized transactions are assigned to the zero percent risk category. The Board also requested comment on whether a higher risk weight, for example 10 percent, might be more appropriate than the zero percent risk weight for these transactions, which can be associated with some, albeit small, risk.

The proposal also stated the Board's intention to continue to require, consistent with the Basle Accord, that for a claim collateralized by cash to be eligible for a preferential risk weight for risk-based capital purposes, the cash must be on deposit in the banking organization. In this connection, however, the Board proposed to clarify that in a securities lending transaction where the banking organization is acting

¹ The Basle Accord is a risk-based framework that was proposed by the Basle Committee on Banking Supervision and endorsed by the central bank governors of the Group of Ten (G-10) countries in July 1988. The committee is comprised of representatives of the central banks and supervisory authorities from the G-10 countries (Belgium, Canada, France, Germany, Italy, Japan, Netherlands, Sweden, Switzerland, the United Kingdom, and the United States) and Luxembourg.

² A claim secured by cash or OECD government securities may be assigned to the 20 percent risk category only to the extent that the face amount of the claim is covered by the market value of the collateral. The portion of the claim that is not covered by recognized collateral is assigned to the risk category appropriate to the obligor or, if relevant, the guarantor.

³ The definition of U.S. Government agency securities in the risk-based capital guidelines does not include U.S. Government-sponsored agency securities. Under the guidelines, claims collateralized by U.S. Government-sponsored agency securities are assigned to the 20 percent risk category.

³⁸ Loans that qualify as loans secured by one- to four-family residential properties are listed in the instructions to the FR Y-9C Report. In addition, for risk-based capital purposes, loans secured by one- to four-family residential properties include loans to builders with substantial project equity for the construction of one- to four-family residences that have been presold under firm contracts to purchasers who have obtained firm commitments for permanent qualifying mortgage loans and have made substantial earnest money deposits.

as agent for a customer that is the beneficial owner of the lent securities and where the borrower has delivered cash collateral to the banking organization that is not maintained on deposit, the transaction will be deemed to be collateralized by cash on deposit and, thus, eligible for a preferential risk weight only if:

(1) Any reinvestment risk associated with the cash collateral is borne by the customer and

(2) Any indemnification provided by the banking organization is limited to the difference between the market value of the lent securities and the amount of cash received as collateral.

If these two conditions are not met, the transaction would not be deemed to be collateralized by cash on deposit and, thus, would not be eligible for a preferential risk weight.

Comments Received

Public comments were received from twenty-two respondents: fifteen banking organizations (three multinational, one superregional, nine regional, and two community banks); two savings institutions; and five trade associations. All of the respondents agreed that the proposal to lower the risk weight from 20 percent to zero percent for certain transactions collateralized by cash or OECD central government securities would result in a more accurate reflection of the very limited risk associated with such transactions. Two commenters suggested that a zero percent risk weight should be extended to any portion of a claim collateralized by cash or OECD central government securities. One of these commenters also recommended that claims collateralized by securities issued by U.S. Government-sponsored agency securities should be accorded a zero percent risk weight. Two commenters suggested technical wording changes to the proposed clarification with regard to securities lending transactions collateralized by cash where a bank is acting in an agent capacity.

The first question on which the Board sought specific comment asked whether additional criteria should be set forth in order to better ensure that only truly low-risk collateralized transactions are assigned to the zero percent risk category. Of the thirteen commenters addressing this question, eleven indicated that additional criteria were not needed. Of the two respondents supporting the establishment of a minimum positive margin, one indicated that a minimum collateral coverage of 101 percent of the claim should be specified, while the other did not indicate a specific level of coverage.

The second question asked whether these transactions should be assigned to a risk weight higher than zero percent, for example 10 percent. Of the thirteen commenters addressing this question, twelve opposed the assignment of a higher risk weight. One trade organization was not opposed to a higher risk weight but felt that a 10 percent risk weight would still overstate the risk inherent in these transactions.

Final Rule

Based upon the comments received and further consideration of the very limited risk associated with assigning collateralized transactions meeting the indicated criteria to the zero percent risk weight, the Board is adopting its proposed revision to the risk-based capital guidelines for state member banks and bank holding companies with regard to these transactions.

This revision will permit banking organizations to assign to the zero percent risk category claims collateralized by cash on deposit in the banking organization or by OECD central government or U.S. Government agency securities for which a positive collateral margin is maintained on a daily basis, fully taking into account any change in the banking organization's exposure to the obligor or counterparty under a claim in relation to the market value of the collateral held in support of that claim. The Board will not require that a specific minimum margin of collateral be maintained on collateralized transactions assigned to the zero percent risk category. However, the Board expects that banking organizations will establish, as a part of prudent operating procedures, a minimum level of margin for these transactions based upon such factors as the volatility of the securities involved so as to avoid unduly frequent margin calls.

The Board is also adopting, with a few technical wording changes, its proposed clarification with regard to certain requirements pertaining to transactions collateralized by cash where the banking organization is acting as agent. This clarification indicates that where a banking organization is acting as agent for a customer in a transaction involving the lending or sale of securities that is collateralized by cash delivered to the banking organization, the transaction is deemed to be collateralized by cash on deposit for purposes of determining the appropriate risk weight, provided that any indemnification is limited to no more than the difference between the market value of the securities and the amount of cash collateral received and any reinvestment risk associated with

the cash collateral is borne by the customer.

This rule is effective immediately in order to implement in the most expeditious manner a capital charge that is more commensurate with the risks entailed in collateralized transactions meeting the specified criteria and that will help place U.S. banking organizations engaging in such transactions on a more equal footing with foreign banks subject to the Basle Accord. In addition, the Board believes an immediate effective date is appropriate because the revision would reduce, rather than expand regulatory burden.

Regulatory Flexibility Act Analysis

The Federal Reserve Board does not believe the adoption of this final rule will have a significant economic impact on a substantial number of small business entities (in this case, small banking organizations), in accord with the spirit and purposes of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). In this regard, the revised final rule will reduce certain regulatory burdens on bank holding companies, as it reduces the capital charge on certain transactions. In addition, because the risk-based capital guidelines generally do not apply to bank holding companies with consolidated assets of less than \$150 million, the final rule will not affect such companies.

List of Subjects

12 CFR Part 208

Accounting, Agricultural loan losses, Applications, Appraisals, Banks, banking, Branches, Capital adequacy, Confidential business information, Currency, Dividend payments, Federal Reserve System, Flood insurance, Publication of reports of condition, Reporting and recordkeeping requirements, Securities, State member banks.

12 CFR Part 225

Administrative practice and procedure, Appraisals, Banks, banking, Capital adequacy, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities, State member banks.

For the reasons set forth in this notice, and pursuant to the Board's authority under section 5(b) of the Bank Holding Company Act of 1956 (12 U.S.C. 1844(b)), and section 910 of the International Lending Supervision Act of 1983 (12 U.S.C. 3909), the Board is amending 12 CFR parts 208 and 225 to read as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

1. The authority citation for part 208 continues to read as follows:

Authority: Sections 9, 11(a), 11(c), 19, 21, 25, and 25(a) of the Federal Reserve Act, as amended (12 U.S.C. 321-338, 248(a), 248(c), 461, 481-486, 601, and 611, respectively); sections 4 and 13(j) of the Federal Deposit Insurance Act, as amended (12 U.S.C. 1814 and 1823(j), respectively); section 7(a) of the International Banking Act of 1978 (12 U.S.C. 3105); sections 907-910 of the International Lending Supervision Act of 1983 (12 U.S.C. 3906-3909); sections 2, 12(b), 12(g), 12(i), 15B(c) (5), 17, 17A, and 23 of the Securities Exchange Act of 1934 (15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o-4(c) (5), 78q, 78q-1, and 78w, respectively); section 5155 of the Revised Statutes (12 U.S.C. 36) as amended by the McFadden Act of 1927; and sections 1101-1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3310 and 3331-3351).

Appendix A—[Amended]

2. Appendix A is amended by replacing the second sentence in the first paragraph, adding a sentence at the end of the first paragraph, and replacing the first and second sentences of the second paragraph of section III.B.1.; adding a paragraph to the end of section III.C.1.; replacing the third paragraph of section III.C.2.; by adding a new sentence to the end of the ninth paragraph of section III.D.1.; and by adding a new item 5. under "Category 1: Zero Percent" and revising item 8. under "Category 2: 20 Percent" of Attachment III, to read as follows:

* * * * *

III. * * *

A. * * *

B. * * * Claims fully secured by such collateral generally are assigned to the 20 percent risk-weight category. Collateralized transactions meeting all the conditions described in section III.C.1. may be assigned a zero percent risk weight.

With regard to collateralized claims that may be assigned to the 20 percent risk-weight category, the extent to which qualifying securities are recognized as collateral is determined by their current market value. If such a claim is only partially secured, that is, the market value of the pledged securities is less than the face amount of a balance-sheet asset or an off-balance-sheet item, the portion that is covered by the market value of the qualifying collateral is assigned to the 20 percent risk category, and the portion of the claim that is not covered by collateral in the form of cash or a qualifying security is assigned to the risk category appropriate to the obligor or, if relevant, the guarantor.

* * *

C. * * *

1. * * * This category also includes claims collateralized by cash on deposit in the bank or by securities issued or guaranteed by OECD central governments or U.S. government agencies for which a positive margin of collateral is maintained on a daily basis fully taking into account any change in

the bank's exposure to the obligor or counterparty under a claim in relation to the market value of the collateral held in support of that claim. * * *

2. * * * This category also includes the portions of claims (including repurchase transactions) collateralized by cash on deposit in the bank or by securities issued or guaranteed by OECD central governments or U.S. government agencies that do not qualify for the zero percent risk-weight category; collateralized by securities issued or guaranteed by U.S. government-sponsored agencies; or collateralized by securities issued by multilateral lending institutions or regional development banks in which the U.S. government is a shareholder or contributing member.

* * * * *

D. * * *

1. * * * Where a bank is acting as agent for a customer in a transaction involving the lending or sale of securities that is collateralized by cash delivered to the bank, the transaction is deemed to be collateralized by cash on deposit in the bank for purposes of determining the appropriate risk-weight category, provided that any indemnification is limited to no more than the difference between the market value of the securities and the cash collateral received and any reinvestment risk associated with that cash collateral is borne by the customer. * * *

* * * * *

Attachment III * * *

Category 1: Zero Percent * * *

5. Claims collateralized by cash on deposit in the bank or by securities issued or guaranteed by OECD central governments or U.S. government agencies for which a positive margin of collateral is maintained on a daily basis, fully taking into account any change in the bank's exposure to the obligor or counterparty under a claim in relation to the market value of the collateral held in support of that claim. * * *

Category 2: 20 Percent * * *

8. The portions of claims that are collateralized³ by cash on deposit in the bank or by securities issued or guaranteed by the U.S. Treasury, the central governments of other OECD countries, and U.S. government agencies that do not qualify for the zero percent risk-weight category, or that are collateralized by securities issued or guaranteed by U.S. government-sponsored agencies. * * *

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PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority citation for part 225 continues to read as follows:

³ The extent of collateralization is determined by current market value.

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1843(c)(8), 1844(b), 3106, 3108, 3907, 3909, 3310, and 3331-3351.

Appendix A—[Amended]

2. Appendix A is amended by replacing the second sentence in the first paragraph, adding a sentence at the end of the first paragraph, and replacing the first and second sentences of the second paragraph of section III.B.1.; adding a paragraph to the end of section III.C.1.; replacing the third paragraph of section III.C.2.; by adding a new sentence to the end of the ninth paragraph of section III.D.1.; and by adding a new item 5. under "Category 1: Zero Percent" and revising item 8. under "Category 2: 20 Percent" of Attachment III, to read as follows:

* * * * *

III. * * *

A. * * *

B. * * * Claims fully secured by such collateral generally are assigned to the 20 percent risk-weight category. Collateralized transactions meeting all the conditions described in section III.C.1. may be assigned a zero percent risk weight.

With regard to collateralized claims that may be assigned to the 20 percent risk-weight category, the extent to which qualifying securities are recognized as collateral is determined by their current market value. If such a claim is only partially secured, that is, the market value of the pledged securities is less than the face amount of a balance-sheet asset or an off-balance-sheet item, the portion that is covered by the market value of the qualifying collateral is assigned to the 20 percent risk category, and the portion of the claim that is not covered by collateral in the form of cash or a qualifying security is assigned to the risk category appropriate to the obligor or, if relevant, the guarantor.

* * *

C. * * *

1. * * * This category also includes claims collateralized by cash on deposit in the subsidiary lending institution or by securities issued or guaranteed by OECD central governments or U.S. government agencies for which a positive margin of collateral is maintained on a daily basis, fully taking into account any change in the banking organization's exposure to the obligor or counterparty under a claim in relation to the market value of the collateral held in support of that claim. * * *

2. * * * This category also includes the portions of claims (including repurchase transactions) collateralized by cash on deposit in the subsidiary lending institution or by securities issued or guaranteed by OECD central governments or U.S. government agencies that do not qualify for the zero percent risk-weight category; collateralized by securities issued or guaranteed by U.S. government-sponsored agencies; or collateralized by securities issued by multilateral lending institutions or regional development banks in which the U.S. government is a shareholder or contributing member. * * *

* * * * *

D. * * *

1. * * * Where a banking organization is acting as agent for a customer in a transaction

involving the lending or sale of securities that is collateralized by cash delivered to the banking organization, the transaction is deemed to be collateralized by cash on deposit in a subsidiary lending institution for purposes of determining the appropriate risk-weight category, provided that any indemnification is limited to no more than the difference between the market value of the securities and the cash collateral received and any reinvestment risk associated with that cash collateral is borne by the customer.

Attachment III * * *

Category 1: Zero Percent * * *

5. Claims collateralized by cash on deposit in the subsidiary lending institution or by securities issued or guaranteed by OECD central governments or U.S. government agencies for which a positive margin of collateral is maintained on a daily basis, fully taking into account any change in the bank's exposure to the obligor or counterparty under a claim in relation to the market value of the collateral held in support of that claim. * * *

Category 2: 20 Percent * * *

8. The portions of claims that are collateralized² by cash on deposit in the subsidiary lending institution or by securities issued or guaranteed by the U.S. Treasury, the central governments of other OECD countries, and U.S. government agencies that do not qualify for the zero percent risk-weight category, or that are collateralized by securities issued or guaranteed by U.S. government-sponsored agencies. * * *

Board of Governors of the Federal Reserve System, December 23, 1992.

William W. Wiles,
Secretary of the Board.

[FR Doc. 92-31702 Filed 12-29-92; 8:45 am]
BILLING CODE 6210-01-F

12 CFR Part 264

[Docket No. R-0788]

Employee Responsibilities and Conduct

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is amending its regulations regarding employee responsibilities and conduct by removing the Board's confidential reporting requirements relating to employment and financial interests. These regulations have been superseded by regulations issued by the Office of Government Ethics (OGE) that took effect on October 5, 1992. This rule is

intended to conform the Board's rules to the OGE's regulations.

EFFECTIVE DATE: December 30, 1992.

FOR FURTHER INFORMATION CONTACT: Cary K. Williams, Senior Attorney, (202/452-3295), or Timothy J. Byrne, Attorney, (202/452-3565), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Street, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

The OGE, pursuant to title I of the Ethics in Government Act of 1978, as amended by the Ethics Reform Act of 1989 and related legislation pertaining to executive branch employees and Executive Order 12674, has issued an interim rule that revises the confidential financial disclosure system for the executive branch of the United States government. The interim rule requires executive branch agencies to review their existing confidential financial disclosure regulations to determine if they need to be removed or modified to conform with the new rule. Certain provisions of part 264 of the Board's regulations are superseded by the regulations set forth in subpart I of the interim rule published at 57 FR 11826 on April 7, 1992 (to be codified as subpart I of 5 CFR part 2634). Therefore, the Board has determined that part 264 should be amended by removing the superseded sections.

In accordance with the Administrative Procedure Act (5 U.S.C. § 553), it is the practice of the Board to offer interested parties the opportunity to comment on proposed regulations. Adhering to the normal notice and comment procedures and the 30-day post-publication waiting period is unnecessary in this case because the OGE regulations became effective on October 5, 1992.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. § 601 *et seq.*), the Board certifies that this rule will not have a significant economic impact on a substantial number of small entities. The amendment is a removal of regulations governing employee financial disclosure statements that have been superseded by regulations issued by the OGE that became effective October 5, 1992, and would not have a substantial effect on particular small entities.

List of Subjects in 12 CFR Part 264

Conflicts of interests, Federal Reserve System.

For the reasons set forth in the preamble, and pursuant to the Board's authority under the Ethics Reform Act of 1989, the Board is amending 12 CFR part 264 as follows:

PART 264—EMPLOYEE RESPONSIBILITIES AND CONDUCT

1. The authority citation for part 264 continues to read as follows:

Authority: E.O. 11222, 3 CFR, 1964-1965 Comp.; 5 CFR 735.104.

2. Section 264.735-4 is removed and reserved.

3. Section 264.735-8 is removed.

4. Appendix A to part 264 is removed.

By order of the Board of Governors of the Federal Reserve System, December 23, 1992
William W. Wiles,
Secretary of the Board.

[FR Doc. 92-31703 Filed 12-29-92; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 910

[No. 92-750]

Leverage Ratio on Consolidated Federal Home Loan Bank Debt

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is revising its regulations regarding leverage of the Federal Home Loan Bank (FHLBank) System by expanding the definition of debt to include certain senior unsecured liabilities and to increase the permitted debt to capital ratio from 12:1 to 20:1. The revised leverage constraints provide meaningful protection to FHLBank System bondholders. The change will increase the availability of housing finance and increase the attractiveness of System membership.

EFFECTIVE DATE: January 29, 1993.

FOR FURTHER INFORMATION CONTACT: Michael J. Higgins, Director of Strategic Planning, (202) 408-2962, or James H. Gray Jr., Associate General Counsel, (202) 408-2552.

SUPPLEMENTARY INFORMATION:

Discussion

A. Background

Section 702 of the Financial Institutions Reform, Recovery and

² The extent of collateralization is determined by current market value.

Enforcement Act of 1989, Public Law No. 101-73, 103 Stat. 183 (August 9, 1989) (FIRREA) charges the Federal Housing Finance Board (Finance Board), *inter alia*, with the duty to ensure that the Federal Home Loan Banks (FHLBanks) carry out their housing finance mission and " * * * remain adequately capitalized and able to raise funds in the capital markets * * *." 12 U.S.C. 1422a(a)(3). The Finance Board raises funds through the issuance of consolidated obligations for which the FHLBanks are jointly and severally liable. The funds so raised enable the FHLBanks to make competitively priced advances available to members.

The change in the leverage ratio will provide the FHLBanks with greater flexibility to make more efficient use of their capital. In the view of the Finance Board, this flexibility is necessary for the FHLBanks to continue to provide reasonably priced advances to current and prospective members. This furthers the Finance Board's Congressionally-imposed duties to ensure that the FHLBanks carry out their housing finance mission and remain adequately capitalized and able to raise funds in the capital markets.

Through the first fifteen years of the FHLBank System's existence, the FHLBanks raised funds in the capital markets through the issuance of consolidated debentures under the authority of 12 U.S.C. 1431(b). The proceeds of the consolidated debentures were divided among the twelve FHLBanks to finance their operations. Each FHLBank received a portion of the consolidated debentures based on its anticipated operational needs. However, the ability of the FHLBank System to issue consolidated debentures was limited statutorily to an amount equal to five times the total paid-in capital of the twelve FHLBanks. See 12 U.S.C. 1431(b). Since each FHLBank member could then borrow up to twelve times the amount of its FHLBank stock, there was concern that the FHLBank System could become unable to borrow additional funds to meet member advance demand. See 47 Stat. 725, 731 (1932); formerly at 12 U.S.C. 1431(c) (repealed by Pub. L. No. 97-320, sec. 352, 96 Stat. 1507 (October 15, 1982)).

In 1946, the former Federal Home Loan Bank Administration (Bank Administration), the predecessor to the former Federal Home Loan Bank Board (Bank Board), retired the consolidated debentures issued pursuant to 12 U.S.C. 1431(b) to allow for the issuance of

consolidated bonds pursuant to 12 U.S.C. 1431(c).¹

In connection with these changes, the former Bank Administration promulgated regulations which set forth the conditions and limitations under which it would issue FHLBank consolidated bonds. The regulations were first published at § 4.3(a) and § 4.3(f) of title 24 of the Code of Federal Regulations in substantially the same form as they remain today. See 11 FR 9925 (Sept. 10, 1946). More recently, these conditions were codified in the former Bank Board's regulations at 12 CFR 506.1 and 506.6 (1989 redesignated). After the enactment of FIRREA, the Bank Board's regulations were redesignated as § 910.1 and § 910.6 of the regulations for the newly created Finance Board. The only revision to the regulations at that time was the change in the agency's name. See 54 FR 36757 (Sept. 5, 1989).

Under the current regulations, there are two conditions for the issuance of consolidated obligations. First, there is a "leverage ratio requirement" in § 910.1 that dictates that the Finance Board cannot issue consolidated obligations in excess of 12 times the FHLBanks' total paid-in capital stock and reserves set out in 12 U.S.C. 1436. In addition to the leverage ratio requirement, § 910.1 also requires that the FHLBanks hold eligible assets, free and clear of any liens or pledges, in an amount greater than or equal to the amount of consolidated obligations outstanding (the "negative pledge requirement"). Although the Finance Board is making changes in both the leverage ratio and negative pledge requirements, the Finance Board is retaining both. Along with the FHLBanks' excellent credit record of never having suffered a credit loss, these limitations will continue to provide substantial protection to FHLBank System bondholders. These are in addition to the protections provided by the FHLBank System's strong capital position.

B. Comments on the Proposed Rule

On May 11, 1992, the Finance Board published a proposed rule and solicited public comment on all aspects of the proposed rule. See 57 FR 20061. The Finance Board received two comment letters. Comments were submitted by one financial trade association, and one non-FHLBank government-sponsored enterprise. Both commentators generally supported the proposed revisions. For

example, one commentator stated that it "strongly endorses the thrust of the proposal and supports its immediate adoption." The commentator, however, suggested some minor modifications.

Both commentators found the increase in the leverage ratio to be appropriate. One commentator suggested that "relying solely on a leverage ratio could be unwise" because such a capital standard may not fully account for risk. The commentator proffered, as an example, that a significant increase in off-balance sheet obligations would increase risk but would not affect the capital required under the leverage ratio. To ensure that risks are fully identified, this commentator encouraged the Finance Board to consider adopting a dynamic risk-based capital standard similar in concept to that in the recently enacted government-sponsored enterprises legislation that will apply to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation. Currently, the FHLBank System's off-balance sheet obligations are relatively small compared to its on-balance sheet obligations. Should that situation change, the final rule would permit migration to a new or supplemental capital standard.

Concern was expressed by one commentator over the proposed definition of capital accounts eligible to meet the leverage limit. This commentator thought that such accounts should be limited to paid-in capital and retained earnings. The commentator stated that "the role of loss reserve accounts should be to meet a companion risk-based capital requirement that would * * * consider the exposure from off-balance sheet liabilities."

The Finance Board sees merit in this comment and it has decided to specifically exclude loss reserves and deposit reserves set out in 12 U.S.C. 1431(g) from the definition of capital. The Finance Board also has made an conforming change to § 910.0(d) to clarify that allowances for losses for off-balance sheet obligations are excluded from the scope of liabilities covered by this leverage ratio. Thus, loss reserves are excluded from both the numerator and the denominator of the leverage ratio.

One commentator noted certain changes in the revised negative pledge requirement. This commentator assumed that appropriate Generally Accepted Accounting Principles (GAAP) for balance sheet carrying values would apply and that these items would be subject to prudent regulation

¹ 12 U.S.C. 1431(c) authorizes the Finance Board to issue consolidated bonds only if there are no outstanding debentures at the time of the issuance of consolidated bonds or if consolidated bonds are issued to refund all outstanding debentures.

by the Finance Board for the individual FHLBanks. This assumption is correct.

The language describing the required defeasance amount was questioned by one commentator who believed that the reinvestment income from the government bonds should be included when computing the required amount. In fact, investment income from the original investment was taken into account by the proposed rule. The Finance Board believes that the mechanism to defease the bonds without taking into consideration further investment or reinvestment income is the most prudent defeasance approach and provides the most security to the bondholders. The Finance Board has decided to retain the wording in the proposed rule.

Both commentators mentioned the provisions of § 910.6(b)(2), which describe the circumstances under which the Finance Board may further amend the leverage requirements. One commentator found the proposed rule language, "materially adverse effect on creditworthiness," to be ambiguous as to whether the investment banker certification provision should be interpreted as permitting no rating downgrade or as only assuring the continuation of current debt service and repayment of principal at maturity. The other commentator urged the Finance Board not to adopt § 910.6(b)(2). This commentator stated that responsibility for regulating the capital adequacy of government-sponsored enterprises should "remain in the public sector and not, in effect, be delegated to private firms with no public responsibility or accountability."

Changes may be made in the leverage requirements if the Finance Board receives either: (i) Written evidence from at least one major nationally recognized securities rating agency that the proposed change will not result in the lowering of its then-current rating or assessment on FHLBank senior bonds outstanding or next to be issued, or (ii) a written opinion from an investment banking firm that the proposed change would not have a materially adverse effect on the creditworthiness of FHLBank senior bonds. The Finance Board intends for materially adverse effect on creditworthiness to be interpreted as a lowering in the then-current rating or assessment on FHLBank senior bonds.

Despite these safeguards which ensure that any further changes in the leverage requirements will be safe changes, the Finance Board continues to see itself as the entity with primary responsibility for assuring a manageable debt level and overall safety and

soundness. No amendment to the leverage requirements will be made except with the approval of the Finance Board and the Finance Board will not approve any change which is unsound.

One commentator also suggested that the Finance Board consider the definition of "mortgage assets" for purposes of the one percent portfolio-based requirement applicable to non- or low-users of the advances window. The Commentator did recognize that any major adjustment on this issue would require statutory revision.

C. Changes to the Current Regulations

The Finance Board appreciates the thoughtful comments on the proposed rule and has made adjustments in the final rule as a result of the comments. The Finance Board has determined that the FHLBank System needs the ability to increase the FHLBank System's leverage. Increasing the FHLBank System's ability to leverage its capital will enable the FHLBanks to offer lower advance rates, in turn making advances more attractive and enabling the FHLBank System to better accomplish its housing finance mission.

Section 910.0 defines certain terms. "Senior bonds" are the bonds subject to the leverage ratio, which currently includes all consolidated bonds outstanding. "Unsecured, senior liabilities" refers to certain obligations, such as deposits, that are accounted for as liabilities under GAAP. However, certain other liabilities, such as allowances for losses for off-balance sheet obligations, are specifically excluded from the definition. The Finance Board wishes to make it clear that, for purposes of the leverage ratio requirement and the negative pledge requirement, consolidated bonds and unsecured, senior liabilities are not deemed to be outstanding and are not taken into account in applying these requirements if such bonds or debts are deemed to be extinguished either through a legal defeasance or an insubstance defeasance.

Section 910.1 of the final regulations will increase the leverage ratio ceiling from 12:1 to 20:1. In addition, the debt component of the ratio is being changed to include not only senior bonds, but also unsecured, senior liabilities. The senior bonds in the debt component of the ratio specifically excludes any liabilities subordinated to the then-outstanding consolidated obligations.

The debt component of the leverage ratio is being changed to more accurately reflect the FHLBank System's current liability structure. In 1946, when the current regulations were originally promulgated, consolidated

obligations comprised virtually all of the obligations of the FHLBank System. However, as the services offered by the FHLBanks have evolved over the last 45 years, member deposits have become a more significant item of the balance sheet. By modifying the leverage formula to take into account senior bonds and unsecured, senior liabilities, the revised rule provides a more comprehensive debt limitation test than current § 910.1. This enhances bondholder protection.

The final rule also changes the definition of capital for purposes of this calculation to include all paid-in capital stock, retained earnings and reserves (excluding loss reserves and section 11 reserves), rather than just paid-in capital stock and reserves under 12 U.S.C. 1436 as in the current regulation. The only change from the proposed rule is a clarification of the meaning of "reserves."

The final rule does not make any change in the Finance Board's control over the issuance of FHLBank obligations, including the terms of issuance. However, the final rule clarifies that the Finance Board can delegate this issuance responsibility.

To account for certain conservative investment opportunities that have emerged since 1946, § 910.1(c) of the final rule increases the types of assets that qualify for the negative pledge requirement. The final rule adds assets that are suitable investments for the FHLBanks under 12 U.S.C. 1436(a). These assets include: Obligations, participations or other instruments of or issued by the Federal National Mortgage Association or the Government National Mortgage Association; mortgages, obligations or other securities which are or ever have been sold by the Federal Home Loan Mortgage Corporation; and such securities as fiduciary and trust funds may invest in under the laws of the state in which the FHLBank holding the investment is located.

Section 910.1(c)(6) adds an additional category of qualifying assets which permits the use of these other assets to meet the negative pledge requirement. The requirement that such investments have a rating or assessment at least equal to senior bonds, which currently enjoy the highest investment rating, provides bondholders with assurance that these investments will have a relatively conservative risk profile.

Finally, under the last clause of § 910.1(c), any assets securing certain obligations may be used to meet the negative pledge requirement. This final clause acknowledges that assets committed or pledged to the repayment of any consolidated obligations, whether

issued before or after these amendments, reduce, dollar for dollar, the amount of consolidated obligations to be repaid from unpledged assets.

The defeasance language in § 910.6 is made more precise in the final rule to clarify that if the Finance Board ever decides to retire bonds by defeasance, it could use a "net defeasance," whereby the anticipated interest on the defeasance escrow would be taken into account in determining the amount of obligations required for defeasance.

In addition to the mechanisms in § 910.6 that have historically permitted limited changes in the leverage ratio or the negative pledge requirement, the final rule allows the Finance Board to make changes in the leverage ratio requirement if the Finance Board receives written evidence from at least one nationally recognized securities rating firm that the change will not cause a reduction in the then current rating of senior bonds issued by the FHLBank System or next to be issued; or a written opinion from an investment banking firm that the proposed change would not have a materially adverse effect on the creditworthiness of senior bonds outstanding or those next to be issued.

The Finance Board has considered a number of alternatives in developing the final rule, including defeasance of the senior bonds and allowing the FHLBanks to issue individual non-consolidated debt pursuant to 12 U.S.C. 1431(a). The Finance Board decided against defeasance of senior bonds because the large dollar value of currently outstanding long-term senior bonds makes the cost of defeasance prohibitively expensive. The Finance Board decided against the issuance of individual FHLBank non-consolidated debt at this time because consolidated FHLBank debt is a strong and well understood product in the public debt markets. While non-consolidated FHLBank debt also would be strong, the Finance Board did not want to undertake the process of familiarizing the market with a new product at this time. The Finance Board believes that the approach selected is the one best suited to accomplish the Finance Board's housing finance mission prescribed by Congress.

Paperwork Reduction Act

No collection of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) is contained in the final rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601 *et seq.*), it is certified that this rule would not have a significant economic impact on a substantial number of small entities.

No small entities will be adversely affected by this rule. The FHLBanks, whose ability to raise capital will be enhanced by these changes, are not small entities. The rule increases the funds, in the form of advances, which can be made available to member institutions, including those which are small entities. The rule also provides adequate protection for bondholders, that might be small entities, by ensuring that creditworthiness of senior bonds will not be adversely affected.

List of Subjects in 12 CFR Part 910

Federal home loan banks.

Accordingly, the Federal Housing Finance Board amends title 12, chapter IX, subchapter A, part 910 of the Code of Federal Regulations as set forth below:

PART 910—CONSOLIDATED BONDS AND DEBENTURES

1. The authority citation for part 910 is revised to read as follows:

Authority: Sec. 2B, as added by 103 Stat. 183, 413 (12 U.S.C. 1422b); sec. 11 as amended by 103 Stat. 183, 418 (12 U.S.C. 1431).

2. Section 910.0 is added to read as follows:

§ 910.0 Definitions.

(a) *Board* means the Federal Housing Finance Board.

(b) *Consolidated bonds* means bonds or notes issued on behalf of all Federal Home Loan Banks.

(c) *Senior bonds* means consolidated bonds issued pursuant to 12 U.S.C. 1431 and this part and not defeased, other than bonds specifically subordinated to any then outstanding consolidated bonds.

(d) *Unsecured, senior liabilities* means all obligations of the Banks recognized as a liability under Generally Accepted Accounting Principles, except:

- (1) Liabilities that are covered by a perfected security interest;
- (2) Consolidated bonds;
- (3) Bonds issued pursuant to 12 U.S.C. 1431(a); and
- (4) Allowance for losses for off-balance sheet obligations.

3. Section 910.1 is revised to read as follows:

§ 910.1 Issuance of consolidated bonds.

(a) *General.* The Board will determine and authorize the issuance of all

consolidated bonds, dates of issue, maturities, rates of interest, terms and conditions thereof, and the manner in which such bonds shall be issued, subject to the provisions of 31 U.S.C. 9108. The Board in its discretion may delegate this responsibility.

(b) *Leverage limit.* The Board shall not issue senior bonds, other than bonds issued to refund consolidated bonds previously issued, if, immediately following such issuance, the aggregate amount of senior bonds and unsecured, senior liabilities of the Federal Home Loan Banks exceeds twenty (20) times the total paid-in capital stock, retained earnings and reserves (excluding loss reserves and deposit reserves pursuant to 12 U.S.C. 1431(g)), of all the Federal Home Loan Banks.

(c) *Negative pledge requirement.* The Federal Home Loan Banks shall at all times maintain assets of the following types, free from any lien or pledge, in a total amount at least equal to the amount of senior bonds outstanding:

- (1) Cash;
- (2) Obligations of or fully guaranteed by the United States;
- (3) Secured advances;
- (4) Mortgages as to which one or more Federal Home Loan Banks have any guaranty or insurance, or commitment therefore, by the United States or any agency thereof;
- (5) Investments described in section 16(a) of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1436(a)); and
- (6) Other securities which have been assigned a rating or assessment by a major nationally recognized securities rating agency that is equivalent to or higher than the rating or assessment assigned by such agency on senior bonds outstanding.

Provided, however, that any assets of the types described in paragraphs (c)(1) through (6) of this section which are subject to a lien or pledge for the benefit of the holders of any issue of senior bonds shall be treated as if they were assets free from any lien or pledge for purposes of compliance with this provision.

4. Section 910.6 is revised to read as follows:

§ 910.6 Reservation of right to revoke or amend; limitations thereon.

(a) *General.* The right to revoke or amend this part, or to prescribe and issue supplemental or amendatory rules and regulations thereto, is hereby reserved.

(b) *Limitation on amendment of leverage limit or negative pledge requirement.* No revocation or relaxation of any of the restrictions or

requirements contained in or imposed by § 910.1 (b) or (c) shall be effected except:

(1) If there are no senior bonds then outstanding or if there shall have been deposited with the Treasurer of the United States, noncallable (or called) direct obligations of the United States of America or obligations fully guaranteed by the United States of America of such maturities or redemption dates and interest payment dates, and to bear such interest, as will be sufficient to pay in full (together with any other moneys placed in trust and irrevocably committed for such payment and without further investment or reinvestment of either the principal amount thereof or the interest earnings therefrom) the principal of and interest to date of maturity or to such date designated for redemption and any redemption premium on all senior bonds the holders of which have not consented to such revocation or relaxation; or

(2) Section 910.1(b) may be changed by the Board in any manner if the Board receives either:

(i) Written evidence from at least one major nationally recognized securities rating agency which rates or makes an assessment of the senior bonds that such change in that provision will not result in the lowering of its then-current rating or assessment on senior bonds outstanding or next to be issued; or

(ii) A written opinion from an investment banking firm that such change would not have a materially adverse effect on the creditworthiness of senior bonds outstanding or next to be issued.

By the Federal Housing Finance Board.

Dated: December 21, 1992.

Daniel F. Evans, Jr.,

Chairman.

[FR Doc. 92-31452 Filed 12-29-92; 8:45 am]

BILLING CODE 6725-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Parts 201, 203 and 234

[Docket No. N-92-3525; FR-3366-N-01]

Loan and Mortgage Insurance; Changes to the Maximum Loan and Mortgage Limits for Single Family Residences, Condominiums and Manufactured Homes and Lots

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of revisions to FHA maximum loan and mortgage limits for high-cost areas.

SUMMARY: This Notice amends the list of areas eligible for "high-cost" loan and mortgage limits under certain of HUD's insuring authorities under the National Housing Act (NHA). The Notice implements provisions of the fiscal 1993 Appropriations Act for the Department of Housing and Urban Development (Pub. L. 102-389, 106 Stat. 1571) approved by the President on October 6, 1992, to provide for increases in maximum loan and mortgage amounts for high-cost areas. This notice increases the single family maximum mortgage limits for Boston, MA PMSA; Brockton, MA PMSA; Lawrence-Haverhill, MA-NHMSA; New Bedford, MA MSA; Salem-Gloucester, MA PMSA; Worcester, MA MSA; Fall River, MA-RI PMSA; Lowell, MA-NH PMSA; Pawtucket-Woonsocket-Attleboro, RI-MA PMSA; New London-Norwich, CT-RI MSA; Providence, RI PMSA; Nashua, NH PMSA; Manchester, NH MSA; Bridgeport-Milford, CT PMSA; Bristol, CT PMSA; Danbury, CT PMSA; Hartford, CT PMSA; Middletown, CT PMSA; New Britain, CT PMSA; New Haven-Meriden, CT MSA; Waterbury, CT MSA; Norwalk, CT PMSA; Stamford, CT PMSA; Poughkeepsie, NY MSA; Nassau-Suffolk, NY PMSA; New York, NY PMSA; Orange County, NY PMSA; Atlantic City, NJ MSA; Monmouth-Ocean, NJ PMSA; Bergen-Passaic, NJ PMSA; Middlesex-Somerset-Hunterdon NJ PMSA; Newark, NJ PMSA; Washington, DC-MD-VA MSA; Baltimore, MD MSA; Aurora-Elgin, IL PMSA; Lake County, IL PMSA; Galveston-Texas City, TX PMSA; Los Angeles-Long Beach, CA PMSA; Oxnard-Ventura, CA PMSA; Santa Barbara-Santa Maria Lompoc, CA MSA; Oakland, CA PMSA; Salinas-Seaside-Monterey, CA MSA; San Francisco, CA

PMSA; San Jose, CA PMSA; Santa Cruz, CA PMSA; Santa Rosa-Petaluma, CA PMSA; Vallejo-Fairfield-Napa, CA PMSA; Redding, CA MSA; Sacramento, CA MSA; San Diego, CA MSA; Anaheim-Santa Ana, CA PMSA; Riverside-San Bernardino, CA PMSA; and Seattle, WA PMSA. Loans and mortgage limits are adjusted in an area when the Secretary determines that middle- and moderate-income persons have limited housing opportunities because of high prevailing housing sales prices. The 1993 Appropriation Act also imposes a 185 percent cap on any increases over basic dollar limits for Title I manufactured home loans.

EFFECTIVE DATE: December 30, 1992.

FOR FURTHER INFORMATION CONTACT: For single family: Morris Carter, Director, Single Family Development Division, room 9272; telephone (202) 708-2700. For manufactured homes: Robert J. Coyle, Director, Title I Insurance Division, room 9158; telephone (202) 708-2880; 451 Seventh Street, SW., Washington, DC 20410. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Background

The National Housing Act (NHA), U.S.C. 1703 and 1709 *et seq.*, authorizes HUD to insure loans and mortgages for single family residences (from one- to four-family structures), condominiums, manufactured homes, manufactured home lots, and manufactured homes and lots in combination. The NHA permits HUD to adjust the maximum loan and mortgage limits under most of these programs to reflect regional differences in the cost of housing. In addition, section 214 of the NHA provides for special high-cost limits for insured mortgages in Alaska, Guam, Hawaii, and the Virgin Islands.

The last comprehensive list of maximum mortgage limits was published on August 1, 1991 (56 FR 36980), listing all areas eligible for "high-cost" loan and mortgage limits under certain of HUD's insuring authorities under the National Housing Act, and the applicable limits for each area. Amendments to this annual listing were published on December 27, 1991 (56 FR 66975), April 13, 1992 (57 FR 12715) and September 24, 1992 (57 FR 44098).

Amendments to Title II of the NHA

Title II of the HUD Appropriations Act (the Act), amends section 203(b) of the National Housing Act (NHA) to restructure the manner in which maximum single family mortgage amounts are to be determined by HUD.

Under the new law, specific maximum dollar amount limitations are eliminated along with the authority to increase the dollar limitations for high-cost areas. Instead, the Act provides that the maximum loan obligation for mortgages on single family residences insured under the Mutual Mortgage Insurance Fund shall be an amount not to exceed the lesser of 95% of the median one-family house price in the area (with higher percentages provided to take account of the higher costs of two-family, three-family and four-family residences) or \$151,725. The Act also provides a mortgage amount floor so that no area may have a maximum mortgage amount less than the area's current HUD-approved amount.

The Act provides further that the principal obligation on the mortgage loan may not exceed 97% of \$25,000 of the appraised value, 95% of such value in excess of \$25,000 but not exceeding \$125,000, and 90% of such value in excess of \$125,000.

The Department is making a nationwide recalculation of high cost limits currently, and plans to publish, during December 1992, a complete revision of the limits. Additional areas may be the subject of increased limits at that time.

Amendments to Title I of NHA

The HUD Appropriations Act amends section 2(b)(2) of the NHA by establishing a new cap for title I manufactured home loans in high-cost areas. Title I lot loans and combination lot and home loans, under section 2(b)(1)(D) and 2(b)(1)(E) of NHA, may not exceed the lesser of 185 percent of the title I loan amount or the title I loan amount increased by the percentage amount by which the section 203(b) one-family limit (i.e. 95 percent of the median one-family house price in the area) exceeds \$67,500.

To compute the high-cost limit for title I lot and combination loans, follow the examples below; however, in no case may the maximum loan amount exceed 185% of the base title I limits of \$54,000 for a combination manufactured home and lot loan, and \$13,500 for a manufactured home lot loan. For high-cost areas not listed in this notice, a lender can apply the same calculation using the current section 203(b) one-family limits published in August 1, 1991 (56 FR 36980), or the updated limits published for particular areas. (See citations under Background.)

A. Combination manufactured home and lot (excluding Alaska, Guam, Hawaii and the Virgin Islands): To determine the high-cost limit for a combination manufactured home and lot loan, multiply the dollar amount in the "one family" column of this list by .80. However, in no case may this high-cost limit exceed \$99,900 (185% of the base amount of \$54,000). For example, Lawrence-Haverhill MA-NH, PMSA, Rockingham County has a one-family limit of \$151,725. The combination home and lot loan limit is \$99,900 (\$54,800×185%=\$99,900, which is less than \$151,725×.80=\$121,380).

B. Lot only (excluding Alaska, Guam, Hawaii and the Virgin Islands): To determine the high-cost limit for a lot loan, multiply the dollar amount in the "one-family" column of this list by .20. However, in no case may this high-cost limit exceed \$24,975 (185% of the base amount of \$13,500). For example, Lawrence-Haverhill MA-NH, PMSA, Rockingham County has a one-family limit of \$151,725. The lot-only loan limit is \$24,975 (\$13,500×185%=\$24,975, which is less than \$151,725×.20=\$30,345).

C. Alaska, Guam, Hawaii and the Virgin Islands limits: The maximum dollar limits for Alaska, Guam, Hawaii and the Virgin Islands remain the same

as provided for in the HUD Federal Register notice published on August 1, 1991 (56 FR 36980).

Accordingly, the dollar limits for Alaska, Guam, and Hawaii are as follows:

1. For manufactured homes: \$56,700 (\$40,000×140%).
2. For combination manufactured homes and lots: \$75,600 (\$54,000×140%).
3. For lots only: \$18,900 (\$13,500×140%).

This Document

Today's document increases high-cost loan and mortgage limits for the areas set forth in the following table. It lists each high-cost area, with applicable limits for single family residences (including condominiums) insured under sections 203(b), 234(d) and 214 of the National Housing Act.

List of Subjects

24 CFR Part 201

Health facilities, Historic preservation, Home improvement, Loan programs—housing and community development, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 234

Condominiums, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, the Department is publishing the revised dollar limitations as follows:

TITLE II.—UPDATING OF FHA SECTION 203(b), 234(c) AND 214 AREAWIDE MORTGAGE LIMITS

Mortgage limits

Market area designation and local jurisdictions	1-family and condominium unit	2-family	3-family	4-family
Region I—HUD Field Office: Bangor Office				
Portsmouth-Dover-Rochester, NH-ME MSA (part): York County, ME	\$101,250	\$114,000	\$138,000	\$160,500
HUD Field Office: Manchester Office				
Lawrence-Haverhill, MA-NH PMSA (part): Rockingham County, NH (part)	151,725	194,100	234,600	291,600
Lowell, MA-NH PMSA: Hillsborough County, NH (part)	151,725	194,100	234,600	291,600
Rockingham County, NH (part)				
Portsmouth-Dover-Rochester, NH-ME MSA (part): Rockingham County (part)	151,725	194,100	234,600	291,600

TITLE II.—UPDATING OF FHA SECTION 203(b), 234(c) AND 214 AREAWIDE MORTGAGE LIMITS—Continued

Mortgage limits				
Market area designation and local jurisdictions	1-family and condominium unit	2-family	3-family	4-family
Stratford County	101,250	114,000	138,000	160,500
Manchester, NH PMSA:				
Hillsborough County (part)	151,725	194,100	234,600	291,600
Merrimack County, NH (part)				
Rockingham County, NH (part)				
Nashua, NH PMSA:				
Hillsborough County (part)	151,725	194,100	234,600	291,600
Rockingham County (part)				
HUD Field Office: Hartford Office				
Bridgeport-Milford, CT PMSA:				
Fairfield County, CT (part)	151,725	194,100	234,600	291,600
New Haven County, CT (part)				
Bristol, CT PMSA:				
Hartford County, CT (part)	151,725	194,100	234,600	291,600
Litchfield County, CT (part)				
Danbury, CT PMSA:				
Fairfield County, CT (part)	151,725	194,100	234,600	291,600
Litchfield County, CT (part)				
Hartford, CT PMSA:				
Hartford County, CT (part)	151,725	194,100	234,600	291,600
Litchfield County, CT (part)				
Middlesex County, CT (part)				
New London County, CT (part)				
Tolland County, CT (part)				
Middletown, CT PMSA: Middlesex County (part)	151,725	194,100	234,600	291,600
New Britain, CT PMSA: Hartford County	151,725	194,100	234,600	291,600
New Haven-Meriden, CT MSA:				
Middlesex County, CT (part)	151,725	194,100	234,600	291,600
New Haven County, CT (part)				
New London-Norwich, CT RI MSA (part):				
New London County, CT (part)	151,725	194,100	234,600	291,600
Windham County, CT (part)				
Waterbury, CT MSA:				
Litchfield County (part)	151,725	194,100	234,600	291,600
New Haven County (part)				
Norwalk, CT PMSA: Fairfield County (part)	151,725	194,100	234,600	291,600
Stamford, CT PMSA: Fairfield County (part)	151,725	194,100	234,600	291,600
HUD Field Office: Boston Office				
Boston, MA PMSA:				
Bristol County, MA (part)	151,725	194,100	234,600	291,600
Essex County, MA (part)				
Middlesex County, MA (part)				
Norfolk County, MA (part)				
Plymouth County, MA (part)				
Suffolk County, MA				
Worcester County, MA (part)				
Brockton, MA PMSA:				
Bristol County, MA (part)	151,725	194,100	234,600	291,600
Norfolk County, MA (part)				
Lawrence-Haverhill, MA-NH MSA (part):				
Essex County, MA (part)	151,725	194,100	234,600	291,600
New Bedford, MA MSA:				
Bristol County, MA (part)				
Plymouth County, MA (part)				
Salem-Gloucester, MA PMSA: Essex County, MA (part)				
Worcester, MA MSA: Worcester County (part)	151,725	194,100	234,600	291,600
Fall River, MA-RI PMSA (part): Bristol County, MA (part)	151,725	194,100	234,600	291,600
Lowell, MA-NH PMSA (part): Middlesex County, MA (part)	151,725	194,100	234,600	291,600
Pawtucket-Woonsocket-Attleboro, RI-MA PMSA (part):				
Bristol County, MA (part)	151,725	194,100	234,600	291,600
Norfolk County, MA (part)				
Worcester County, MA (part)				
HUD Field Office: Providence Office				
Fall River, MA-RI PMSA (part): Newport County, RI	151,725	194,100	234,600	291,600
Pawtucket-Woonsocket-Attleboro, RI-MA PMSA (part): Providence County (part)	151,725	194,100	234,600	291,600
New London-Norwich, CT-RI (part): Washington County, RI (part)	151,725	194,100	234,600	291,600
Providence, RI PMSA:				
Bristol County, RI	151,725	194,100	234,600	291,600

TITLE II.—UPDATING OF FHA SECTION 203(b), 234(c) AND 214 AREAWIDE MORTGAGE LIMITS—Continued

Mortgage limits

Market area designation and local jurisdictions	1-family and condominium unit	2-family	3-family	4-family
Kent County, RI (part) Newport County, RI (part) Providence County, RI (part) Washington County, RI (part)				

Region II—HUD Field Office: Albany Office

Poughkeepsie, NY MSA: Dutchess County	151,725	194,100	234,600	291,600
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HUD Field Office: New York Office

Nassau-Suffolk, NY PMSA:				
Nassau County	151,725	194,100	234,600	291,000
Suffolk County				
New York, NY PMSA:				
Bronx County	151,725	194,100	234,600	291,000
Kings County				
New York County				
Putnam County				
Queens County				
Richmond County				
Rockland County				
Westchester County				
Orange County, NY PMSA: Orange County	151,725	194,100	234,600	291,000

HUD Field Office: Newark Office

Bergen-Passaic, NJ PMSA:				
Bergen County	151,725	194,100	234,600	291,600
Passaic County				
Middlesex-Somerset-Hunterdon, NJ PMSA:				
Hunterdon County	151,725	194,100	234,600	291,600
Middlesex County				
Somerset County				
Newark, NJ PMSA:				
Essex County	151,725	194,100	234,600	291,600
Morris County				
Sussex County				
Union County				
Monmouth-Ocean, NJ PMSA (part): Monmouth County	138,250	155,700	189,150	218,300

HUD Field Office: Camden Office

Atlantic City, NJ MSA:				
Atlantic County	136,800	154,100	187,250	216,050
Cape May County				
Monmouth-Ocean, NJ PMSA (part): Ocean County	138,250	155,700	189,150	218,300

Region III—HUD Field Office: Baltimore Office

Baltimore, MD MSA:				
Baltimore City	142,500	160,500	195,000	225,000
Anne Arundel County				
Baltimore County				
Carroll County				
Harford County				
Howard County				
Queen Anne's County				
Washington, DC-MD-VA MSA (part):				
Charles County, MD	151,725	194,100	234,600	291,600
Calvert County				
Frederick County				

HUD Field Office: Washington, DC Office

Washington, DC-MD-VA MSA (part):				
District of Columbia	151,725	194,100	234,600	291,600

TITLE II.—UPDATING OF FHA SECTION 203(b), 234(c) AND 214 AREAWIDE MORTGAGE LIMITS—Continued

Mortgage limits				
Market area designation and local jurisdictions	1-family and condominium unit	2-family	3-family	4-family
Montgomery County, MD Prince Georges County, MD Alexandria City, VA Arlington County, VA Fairfax County, VA Falls Church City, VA Loudon County, VA Manassas City, VA Manassas Park City, VA Prince William County, VA				
HUD Field Office: Richmond Office				
Washington, DC-MD-VA MSA (part): Stafford County, VA	151,725	194,100	234,600	291,600
Region V—HUD Field Office: Chicago Office				
Aurora-Elgin, IL PMSA: Kane County	127,110	143,150	173,900	200,700
Kendall County				
Lake County, IL PMSA: Lake County	151,725	194,100	234,600	291,600
Region VI—HUD Field Office: Houston Office				
Galveston-Texas City, TX PMSA: Galveston County	145,300	163,650	198,800	229,400
Region IX—HUD Field Office: Los Angeles Office				
Los Angeles-Long Beach, CA PMSA: Los Angeles County	151,725	194,100	234,600	291,600
Oxnard-Ventura, CA PMSA: Ventura County	151,725	194,100	234,600	291,600
Santa Barbara-Santa Maria-Lompoc, CA MSA: Santa Barbara County	151,725	194,100	234,600	291,600
HUD Field Office: San Francisco Office				
Oakland, CA PMSA: Alameda County	151,725	194,100	234,600	291,600
Contra Costa				
Salinas-Seaside-Monterey, CA MSA: Monterey County	151,725	194,100	234,600	291,600
Marin County	151,725	194,100	234,600	291,600
San Francisco County				
San Mateo County				
San Jose, CA PMSA: Santa Clara County	151,725	194,100	234,600	291,600
Santa Cruz, CA PMSA: Santa Cruz County	151,725	194,100	234,600	291,600
Santa Rosa-Petaluma, CA PMSA: Sonoma County	151,725	194,100	234,600	291,600
Vallejo-Fairfield-Napa, CA PMSA: Napa County	151,725	194,100	234,600	291,600
Solano County				
HUD Field Office: Sacramento Office				
Redding, CA MSA: Shasta County	151,725	194,100	234,600	291,600
Sacramento, CA MSA: El Dorado County	151,050	170,100	206,700	238,500
Placer County				
Sacramento County				
Yolo County				
HUD Field Office: San Diego Office				
San Diego, CA MSA: San Diego County	151,725	194,100	234,600	291,600
HUD Field Office: Santa Ana Office				
Anaheim-Santa Ana, CA PMSA: Orange County	151,725	194,100	234,600	291,600
Riverside-San Bernardino, CA PMSA: Riverside County	151,525	170,650	207,350	239,250

TITLE II.—UPDATING OF FHA SECTION 203(b), 234(c) AND 214 AREAWIDE MORTGAGE LIMITS—Continued

Mortgage limits				
Market area designation and local jurisdictions	1-family and condominium unit	2-family	3-family	4-family
San Bernardino County				
Region X—HUD Field Office: Seattle Office				
Seattle, WA PMSA:				
King County	143,450	161,550	196,300	226,500
Snohomish County				

Dated: December 16, 1992.
 Arthur J. Hill,
 Assistant Secretary for Housing—Federal
 Housing Commissioner.
 [FR Doc. 92-31480 Filed 12-29-92; 8:45 am]
 BILLING CODE 4210-27-M

DEPARTMENT OF THE TREASURY Internal Revenue Service

26 CFR Part 1
 [T.D. 8457]

RIN 1545-AP74

Taxation of Fringe Benefits and Exclusions From Gross Income of Certain Fringe Benefits

AGENCY: Internal Revenue Service,
 Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final amendments to the fringe benefit regulations relating to the valuation of fringe benefits under section 61 and the exclusion of certain benefits as working condition fringes under section 132(a)(3) of the Internal Revenue Code of 1986. The final amendments: (1) Eliminate the requirement that employers must notify their employees of the election to use a special valuation rule, (2) clarify the requirements for using the special valuation rules, (3) provide additional rules for local transportation provided to government employees because of bona fide business-oriented security concerns, and (4) clarify the treatment of bona fide volunteers who perform services for exempt organizations or for a Federal, state, or local government unit. The final amendments affect any person providing or receiving these fringe benefits and provide these persons with the guidance necessary to comply with the law.

DATES: These rules are effective on December 30, 1992, except for the revision of § 1.61-21(c)(3)(ii) which is effective January 1, 1989, and the removal of § 1.61-21(c)(3)(ii) which is effective January 1, 1985. However, taxpayers may treat the rules as

applicable to benefits provided on or after January 1, 1989.

FOR FURTHER INFORMATION CONTACT:

Marianna Dyson, at 202-622-4606 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On September 25, 1991, the Treasury Department and the Internal Revenue Service published proposed amendments (56 FR 48465) to the final working condition fringe benefit regulations under section 132(d) of the Internal Revenue Code of 1986 (Code). The proposed amendments provide additional rules for transportation provided to government employees because of bona fide business-oriented security concerns and clarify the treatment of bona fide volunteers who perform services for exempt organizations or for a Federal, state, or local government unit. In addition, the notice of September 25, 1991, invited comments concerning the requirements under § 1.61-21(c) of the regulations, which sets forth the rules for notifying employees of the employer's election to use a special valuation rule for valuing a benefit in lieu of using the general valuation rules based on facts and circumstances.

Comments were received from the public, and on January 30, 1992, the Internal Revenue Service held a public hearing concerning the proposed amendments. In response to the comments and a statement made at the public hearing, this Treasury decision adopts the proposed amendments to the fringe benefit regulations as revised.

The amendments to the final regulations under section 61 are contained in § 1.61-21. The amendments to the final regulations under section 132 are contained in §§ 1.132-0, 1.132-1, and 1.132-5.

Summary of Comments and Explanation of Provisions

1. Use of Special Valuation Rules

Under section 61 of the Code and the income tax regulations thereunder, a fringe benefit provided by an employer is presumed to be income to the recipient-employee, unless it is specifically excluded from gross income by another section in subtitle A of the Code. The employee is required to include in gross income the fair market value of the benefit after subtracting amounts paid, by or on behalf of the employee, for the benefit, as well as amounts excluded from income by another section of the Code. See § 1.61-21(b)(1) of the regulations.

In general, the regulations require that the fair market value of a fringe benefit be determined based on all the facts and circumstances. As an alternative, § 1.61-21(c) provides that certain commonly provided fringe benefits may be valued using the special valuation rules set forth in § 1.61-21 (d) through (j). The option to use a special valuation rule is the employer's, but if a special valuation rule is used by the employer to value the benefit for reporting purposes, that rule is the only special valuation rule that may be used by either the employer or employee for any purpose. However, the employee may always use the general valuation rules based on facts and circumstances.

If an employer elects to use a special valuation rule, the existing rules in § 1.61-21(c)(3) require the employer to notify employees of the election. If the employer does not provide notice in the time and manner prescribed by § 1.61-21(c)(3)(ii), the employer is prohibited from using special valuation and, instead, must use the general valuation rules based on facts and circumstances. Correspondingly, the employee is restricted to using those rules.

Explanation

The notice of September 25, 1991, invited comments concerning the notice requirements generally under § 1.61-

21(c). In response to a comment, this Treasury Decision amends the regulations by eliminating the notice requirements of §§ 1.61-21(c)(3)(ii) and 1.61-27(c)(3)(ii), effective January 1, 1989, and January 1, 1985, respectively. In addition, the amendments clarify the remaining requirements for using the special valuation rules in the future.

For benefits provided after December 31, 1992, the final amendments provide that neither the employer nor the employee may use special valuation unless one of the following four conditions is satisfied: (1) The employer treats the value of the benefit as wages (for reporting purposes) within the prescribed time; (2) the employee includes the value of the benefit in income within the prescribed time; (3) the employee is not a control employee, as defined in § 1.61-21(f)(5) and (f)(6); or (4) the employer demonstrates a good faith effort to treat the benefit correctly for reporting purposes. If none of the conditions for using special valuation is met, both the employer and employee must use the general valuation rules based on facts and circumstances.

The amendments do not change the rule that the decision to use a special valuation rule remains with the employer. Furthermore, the amendments retain the rule that the employee generally may use a special valuation rule only if the employer uses the rule. Under the final amendments, however, an employee may use a special valuation rule not used by the employer, but only if the employer does not treat the value of the benefit as wages for reporting purposes within a prescribed time and one of the other conditions described above is met.

This Treasury decision also amends § 1.61-21 to correctly reference paragraph (k), the special valuation rule for transportation provided to certain employees, which was added to the fringe benefits regulations by Treasury Decision 8389 on January 15, 1992.

2. Employer-Provided Transportation for Security Concerns Background

As discussed in the preamble to the proposed amendments issued on September 25, 1991, sections 61 and 132 of the Code provide that the value of employer-provided transportation must be included in the employee's gross income unless the transportation is provided in connection with the employer's business. Because commuting and other personal use of employer-provided transportation by an employee is not transportation provided in connection with the employer's business, the value of the transportation

is included in the employee's gross income as a fringe benefit.

If an employee or a member of the employee's immediate family is transported to and from work in the employer's vehicle because of threats made against them, the value of the local transportation used for commuting and other personal purposes will also be included in the employee's gross income. However, under § 1.132-5(m) of the regulations, if the employer provides transportation to an employee because of a "bona fide business-oriented security concern" which results in an "overall security program" being provided to the threatened employee, the employee may exclude from gross income the value of any special security designs on the vehicle (e.g., bullet-proof glass) and the services of a chauffeur/bodyguard, even though the transportation is used for personal purposes.

In addition to demonstrating the existence of a bona fide business-oriented security concern under § 1.132-5(m), the employer must establish an overall security program with respect to the threatened employee. An employer not meeting the requirements for an overall security program under § 1.132-5(m)(2)(iii)(A) of the regulations (e.g., 24-hour protection is not provided) will be treated as having an overall security program only if protection is provided pursuant to the recommendations of an "independent security study" performed by a private security consultant. See § 1.132-5(m)(2)(iv).

Explanation

The final fringe benefit regulations under sections 61 and 132 of the Code were issued on July 6, 1989, and were effective January 1, 1989 (54 FR 28576). As explained in the preamble to the previously proposed amendments to § 1.132-5(m) published on September 25, 1991, the final fringe benefit regulations as applied to Federal, state, and local government employees, particularly those involved in law enforcement, may create unintended tax consequences. Thus, the notice of September 25, 1991, proposes special rules for application to government employers and employees when a bona fide business-oriented security concern exists with respect to a particular employee and the government employer transports the employee by vehicle as part of an overall security program. The notice also proposes special rules relating to the government employer's notification to the employee of its election to use a special valuation rule. Consistent with the stated objective of

addressing the tax problems that may result when government employers are faced with the urgent need to protect employees and their families under specific, imminent threats, the proposed amendments are finalized with modification as explained below.

Comments concerning the proposed regulations suggest that employers may be taking the position that "a bona fide business-oriented security concern" exists in the absence of any specific basis for concern regarding the employee's safety. To avoid any uncertainty concerning the application of the regulations, the final regulations clarify that a bona fide business-oriented security concern does not exist with respect to either a non-government or government employee unless the facts and circumstances establish a specific basis for concern regarding the safety of the employee. A specific basis for concern may be established, for example, by threats of death, serious bodily harm, or kidnapping or by a recent history of terrorist activity in the geographic area. A generalized security concern is not sufficient to establish a bona fide business-oriented security concern. In addition, even though a bona fide business-oriented security concern is determined to exist with respect to a particular employee, the employer remains responsible for periodically evaluating the facts and circumstances to determine whether the bona fide business-oriented security concern still exists.

The Service has also received comments which reveal the need for clarification of certain of the proposed rules. The proposed amendments provide detailed rules permitting a security study performed by the government employer itself to qualify as an independent security study if certain conditions are met. The final amendments retain the proposed rules, but clarify that the independent security study must be performed with respect to each employee who is provided protection, and that a security study must include an estimate of the length of time protective services will be necessary and of the extent to which employer-provided transportation may be necessary during the period of protection.

The final regulations also clarify that the exclusion for personal use, other than commuting, applies only to local vehicle transportation. The exclusion does not apply to employer-provided aircraft. In addition, the proposed amendments relating to the government employer's notice requirement are not adopted because of the revision to § 1.61-21(c) as explained, above.

The final amendments to § 1.132-5(m) are effective on December 30, 1992; however, taxpayers may treat the rules as applicable to benefits provided on or after January 1, 1989.

2. Volunteers

Background

Public comments were received by the Service expressing concern about the application of section 132 to volunteers who perform services for organizations exempt under section 501(a) of the Code and who receive directors' and officers' liability insurance protection (D&O insurance) from those organizations.

Section 132(a) of the Code excludes certain fringe benefits from gross income. Generally, these fringe benefits are excludable by an "employee," whether the employee is compensated or is working as a volunteer. For certain purposes, the term "employee," which is defined in § 1.132-1(b), includes independent contractors. For purposes of sections 132(a) (1) and (2) (relating to no-additional-cost services and qualified employee discounts), however, independent contractors are not treated as "employees." Thus, under section 132(a), bona fide volunteers, like their paid counterparts, may not exclude no-additional-cost services and qualified employee discounts from gross income unless the exempt organization or government employer has the right to direct and control the volunteer's services (i.e., there is an employer-employee relationship).

Although volunteers who are employees may exclude from gross income the fringe benefits listed above, and all volunteers (including independent contractors) may exclude de minimis fringe benefits, the language of § 1.132-1(b) relating to working condition fringes does not encompass bona fide volunteers.

Section 132(d) of the Code and § 1.132-5(a)(1) of the income tax regulations provide that a "working condition fringe" is any property or service provided to an employee of an employer to the extent that, if the employee paid for the property or service, the amount paid would be allowable as a deduction under section 162 or 167. (For purposes of the working condition fringe exclusion, the term "employee" is defined broadly to include employees, partners, directors and independent contractors).

Section 162 of the Code provides a deduction for all the ordinary and necessary expenses paid or incurred in carrying on a trade or business. An individual engaged in carrying on a

trade or business has a profit motive for purposes of section 162. An individual who performs services as a bona fide volunteer does not have a profit motive and thus cannot claim a deduction under section 162 for expenses incurred in connection with such volunteer work. For example, the value of D&O insurance provided to the volunteer would not be excludable as a working condition fringe benefit, even though the same insurance coverage would be excludable from the income of a paid employee or director who has a profit motive.

To correct this technical problem, the Service, pursuant to the authority granted in section 132(k), proposed an amendment to the regulations which was published in the *Federal Register* on September 25, 1991 (56 FR 48465). As stated in the preamble, the proposed amendment is intended to ensure that, like their paid counterparts, bona fide volunteers may exclude working condition fringe benefits, including D&O insurance, from gross income.

The proposed amendment provides that, solely for purposes of section 132(d), a bona fide volunteer, including a director or officer, who performs services for an organization that is exempt from tax under section 501(a), or for a Federal, state, or local government unit, is deemed to have a profit motive for purposes of section 162. Under the proposed amendment, an individual who provides services (including services as an officer, trustee, or director) is, for purposes of section 132(d), a "bona fide volunteer" for an exempt organization or government unit only if the total value of the benefits provided with respect to the volunteer services is substantially less than the total value of the volunteer services the individual provides to the organization. The value of liability insurance coverage is deemed, under the proposed regulation, to be substantially less than the value of the individual's volunteer services to the organization, provided the insurance coverage is limited to acts performed in the discharge of official duties or the performance of services on behalf of the exempt organization or government employer.

Explanation

All of the comments praised the proposed amendment concerning the treatment of bona fide volunteers and urged final adoption quickly. Some of the comments also suggested that the scope of the proposed amendment be expanded and/or clarified to ensure that various issues are addressed.

A few of the comments requested clarification that the receipt of nominal

amounts of compensation for services does not disqualify bona fide volunteers from taking advantage of the section 132(a)(3) working condition fringe exclusion. This concern is addressed not only by the definition of a "bona fide volunteer" in the final amendments, but by the general definition of a working condition fringe in section 132(d).

The final regulations provide that a bona fide volunteer is someone who does not have a profit motive under section 162, but is deemed to have a profit motive only for purposes of the working condition fringe exclusion. The most typical example is the unpaid individual who performs services for an exempt organization or government employer and may receive benefits, but the total value of the benefits provided by the exempt organization or government employer is substantially less than the total value of the volunteer services that the individual provides to the organization. The receipt of D&O liability insurance by the bona fide volunteer, or an exempt organization or government employer's undertaking to indemnify the volunteer for liability, does not by itself confer a profit motive on the volunteer, provided the insurance coverage or indemnification relates to acts performed by the volunteer in the discharge of duties, or the performance of services, on behalf of the exempt organization or government employer. In the case of such a bona fide volunteer, new paragraph (r) of § 1.132-5 deems the volunteer to have a profit motive and thus insures that the volunteer may exclude the value of the D&O insurance provided by the exempt organization or government employer as a working condition fringe.

If it is determined that the individual does, in fact, have a profit motive within the meaning of section 162 and is not a "bona fide volunteer" within the meaning of § 1.132-5(r), the value of the D&O insurance provided by the organization is excludable from the individual's gross income as a working condition fringe by application of section 132(a)(3). This is because, under section 132(d), a payment for D&O insurance by an individual with a profit motive would be allowable as a deduction under section 162 had he or she paid for it directly. To summarize, as a result of this Treasury Decision in conjunction with existing statutory provisions, the value of D&O insurance and of other working condition fringes provided to an individual who performs services for a tax-exempt organization or government employer is excludable as a working condition fringe whether or not the individual has a profit motive.

One comment suggested that indemnification payments permitted by law, whether made by an insurer or directly by the employer, should be treated in the same manner as D&O insurance premiums. The final regulations adopt this suggestion.

A few comments suggested that the final regulations address the application of the self-dealing rules of section 4941, as well as the application of Rev. Rul. 82-223, 1982-2 C.B. 301, to private foundations' D&O insurance premiums and indemnification payments. The resolution of this issue is not possible in the context of this final regulation, but will be addressed separately.

Like other tax-exempt organizations, private foundations need not allocate portions of D&O insurance premiums to individual directors and officers or include any such allocable amounts in Form 1099 or W-2, provided such amounts are excludable from gross income under the final regulations. Whether or not such allocable amounts need to be treated as compensation for the limited purpose of section 4941, no employer should issue a Form 1099 or W-2 for any such amount that is excludable from gross income as a working condition fringe benefit described in section 132(d).

Finally, in response to one comment, an example is included to illustrate the provisions of the final regulation.

The rules of § 1.132-5(r) are effective on December 30, 1992; however, taxpayers may treat the rules as applicable to benefits provided on or after January 1, 1989.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Marianna Dyson, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations), Internal Revenue Service. However, personnel from other offices of the

Service and Treasury Department participated in their development.

List of Subjects in 26 CFR 1.61-1 Through 1.133-1T

Income taxes, Reporting and recordkeeping requirements.

Adoption of the Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.61-2T [Amended]

Par. 2. Section 1.61-2T is amended as follows:

1. Paragraph (c)(3)(ii) is removed.
2. The heading for paragraph (c)(3)(i) is removed and paragraph (c)(3)(i) is redesignated as paragraph (c)(3).

§ 1.61-21 [Amended]

Par. 3. Section 1.61-21 is amended as follows:

1. Paragraph (a)(7) is amended by revising the entry for § 1.61-21(c)(3).
2. Paragraph (a)(7) is amended by adding an entry for § 1.61-21(k).
3. Paragraph (c)(1) is revised.
4. Paragraph (c)(2)(i) is amended by revising the paragraph heading and adding a new sentence at the end.
5. Paragraphs (c)(2)(ii) and (c)(2)(iii) are redesignated (c)(2)(iii) and (c)(2)(iv), respectively.
6. A new paragraph (c)(2)(ii) is added.
7. The headings for paragraphs (c)(3) and (c)(3)(i) are revised and a new sentence is added at the end of paragraph (c)(3)(i).
8. Paragraph (c)(3)(ii) is revised.
9. The first sentence of paragraph (c)(7) is revised.
10. In paragraph (c)(4), the reference to paragraph "(j)" in the first sentence is removed and "(k)" is added in its place.
11. The revisions and additions read as follows:

§ 1.61-21 Taxation of fringe benefits.

- (a) * * *
- (7) * * *

§ 1.61-21(c) Special valuation rules.

* * * * *

(3) Additional rules for using special valuation.

* * * * *

§ 1.61-21(k) Commuting valuation rule for certain employees.

- (1) In general.
- (2) Trip-by-trip basis.

- (3) Commuting value.
- (4) Definition of employer-provided transportation.
- (5) Unsafe conditions.
- (6) Qualified employee defined.
- (7) Examples.
- (8) Effective date.

(c) *Special valuation rules*—(1) *In general.* Paragraphs (d) through (k) of this section provide special valuation rules that may be used under certain circumstances for certain commonly provided fringe benefits. For general rules relating to the valuation of fringe benefits not eligible for valuation under the special valuation rules or fringe benefits with respect to which the special valuation rules are not used, see paragraph (b) of this section.

(2) *Use of the special valuation rules*—(i) *For benefits provided before January 1, 1993.* * * * The provisions of this paragraph are effective for benefits provided before January 1, 1993.

(ii) *For benefits provided after December 31, 1992.* The special valuation rules may be used for income tax, employment tax, and reporting purposes. The employer has the option to use any of the special valuation rules. An employee may use a special valuation rule only if the employer uses that rule or the employer does not meet the condition of paragraph (c)(3)(ii)(A) of this section, but one of the other conditions of paragraph (c)(3)(ii) of this section is met. The employee may always use general valuation rules based on facts and circumstances (see paragraph (b) of this section) even if the employer uses a special rule. If a special rule is used, it must be used for all purposes. If an employer properly uses a special rule and the employee uses the special rule, the employee must include in gross income the amount determined by the employer under the special rule reduced by the sum of—

(A) Any amount reimbursed by the employer to the employee; and

(B) Any amount excludable from income under another section of subtitle A of the Internal Revenue Code of 1986. If an employer properly uses a special rule and properly determines the amount of an employee's working condition fringe under section 132 and § 1.132-5 (under the general rule or under a special rule), and the employee uses the special valuation rule, the employee must include in gross income the amount determined by the employer less any amount reimbursed by the employer to the employee. The employer and employee may use the special rules to determine the amount of the reimbursement due the employer by

the employee. Thus, if an employee reimburses an employer for the value of a benefit as determined under a special valuation rule, no amount is includible in the employee's gross income with respect to the benefit. The provisions of this paragraph are effective for benefits provided after December 31, 1992.

(3) *Additional rules for using special valuation*—(i) *Election to use special valuation rules for benefits provided before January 1, 1993.* * * * The provisions of this paragraph are effective for benefits provided before January 1, 1993.

(ii) *Conditions on the use of special valuation rules for benefits provided after December 31, 1992.* Neither the employer nor the employee may use a special valuation rule to value a benefit provided after December 31, 1992, unless one of the following conditions is satisfied—

(A) The employer treats the value of the benefit as wages for reporting purposes within the time for filing the returns for the taxable year (including extensions) in which the benefit is provided;

(B) The employee includes the value of the benefit in income within the time for filing the returns for the taxable year (including extensions) in which the benefit is provided;

(C) The employee is not a control employee as defined in paragraphs (f)(5) and (f)(6) of this section; or

(D) The employer demonstrates a good faith effort to treat the benefit correctly for reporting purposes.

(7) *Special accounting rule.* If the employer is using the special accounting rule provided in Announcement 85-113 (1985-31 I.R.B. 31, August 5, 1985) (see § 601.601(d)(2)(ii)(b) of this chapter) (relating to the reporting of and withholding on the value of noncash fringe benefits), benefits which are deemed provided in a subsequent calendar year pursuant to that rule are considered as provided in that subsequent calendar year for purposes of the special valuation rules.

Par. 4. Section 1.132-0 is amended as follows:

1. The entry for § 1.132-5(m)(6) is revised; and the entries for paragraphs (m)(7) and (m)(8) are added.

2. An entry for § 1.132-5(r) is added.

3. The revisions and additions read as follows:

§ 1.132-0 Outline of regulations under section 132.

§ 1.132-5(m) Employer-provided transportation for security concerns.

(6) Special valuation rule for government employees.

(7) Government employer and employee defined.

(8) Examples.

§ 1.132-5(r) Volunteers.

(1) In general.

(2) Limit on application of this paragraph.

(3) Definitions.

(4) Example.

Par. 5. Section 1.132-1(g) is amended by adding two sentences after the first sentence to read as follows:

§ 1.132-1 Exclusion from gross income for certain fringe benefits.

(g) * * * Furthermore, in § 1.132-5, the eleventh sentence of paragraph (m)(1), *Examples 6 and 7 in paragraph (m)(8), and paragraphs (m)(2)(i), (m)(2)(v), (m)(3)(iv), (m)(6), (m)(7), and (r)* are effective on December 30, 1992; however, taxpayers may treat the rules as applicable to benefits provided on or after January 1, 1989. For the applicable rules relating to employer-provided transportation for security concerns prior to December 30, 1992, see § 1.132-5(m) (as contained in 26 CFR part 1 (§§ 1.61 to 1.169) revised April 1, 1992).

Par. 6. Section 1.132-5 is amended as follows:

1. A new sentence is added between the tenth and eleventh sentences of paragraph (m)(1).

2. Paragraph (m)(2)(i) is revised.

3. Paragraphs (m)(2)(v) and (m)(3)(iv) are added.

4. Paragraph (m)(6) is redesignated as paragraph (m)(8) and *Examples 6 and 7* are added.

5. Paragraphs (m)(6) and (m)(7) are added.

6. Paragraph (r) is added.

7. The revisions and additions read as follows:

§ 1.132-5 Working condition fringes.

(m) * * *

(1) * * * However, if an independent security study meeting the requirements of paragraph (m)(2)(v) of this section has been performed with respect to a government employee, the government employee may exclude the value of the personal use (other than commuting) of the employer-provided vehicle that the security study determines to be reasonable and necessary for local transportation.

(2) * * *

(i) *In general.* For purposes of this paragraph (m), a bona fide business-oriented security concern exists only if the facts and circumstances establish a specific basis for concern regarding the safety of the employee. A generalized concern for an employee's safety is not a bona fide business-oriented security concern. Once a bona fide business-oriented security concern is determined to exist with respect to a particular employee, the employer must periodically evaluate the situation for purposes of determining whether the bona fide business-oriented security concern still exists. Example of factors indicating a specific basis for concern regarding the safety of an employee are—

(A) A threat of death or kidnapping of, or serious bodily harm to, the employee or a similarly situated employee because of either employee's status as an employee of the employer; or

(B) A recent history of violent terrorist activity (such as bombings) in the geographic area in which the transportation is provided, unless that activity is focused on a group of individuals which does not include the employee (or a similarly situated employee of an employer), or occurs to a significant degree only in a location within the geographic area where the employee does not travel.

(v) *Independent security study with respect to government employees.* For purposes of establishing the existence of an overall security program under paragraph (m)(2)(ii) of this section with respect to a particular government employee, a security study conducted by the government employer (including an agency or instrumentality thereof) will be treated as a security study pursuant to paragraph (m)(2)(iv) of this section if, in lieu of the conditions of paragraphs (m)(2)(iv)(A) through (D) of this section, the following conditions are satisfied:

(A) The security study is conducted by a person expressly designated by the government employer as having the responsibility and independent authority to determine both the need for employer-provided security and the appropriate protective services in response to that determination;

(B) The security study is conducted in accordance with written internal procedures that require an independent and objective assessment of the facts and circumstances, such as the nature of the threat to the employee, the appropriate security response to that threat, an estimate of the length of time

protective services will be necessary, and the extent to which employer-provided transportation may be necessary during the period of protection;

(C) With respect to employer-provided transportation, the security study evaluates the extent to which personal use, including commuting, by the employee and the employee's spouse and dependents may be necessary during the period of protection and makes a recommendation as to what would be considered reasonable personal use during that period; and

(D) The employer applies the specific security recommendations contained in the study to the employee on a consistent basis.

(3) * * *

(iv) *Spouses and dependents of government employees.* The security rules of this paragraph (m)(3) apply to the spouse and dependents of a government employee. However, the value of local vehicle transportation provided to the government employee's spouse and dependents for personal purposes, other than commuting, during the period that a bona fide business-oriented security concern exists with respect to the government employee will not be included in the government employee's gross income if the personal use is determined to be reasonable and necessary by the security study described in paragraph (m)(2)(v) of this section.

* * *

(6) *Special valuation rule for government employees.* If transportation is provided to a government employee for commuting during the period that a bona fide business-oriented security concern under § 1.132-5(m) exists, the commuting use may be valued by reference to the values set forth in § 1.61-21(e)(1)(i) or (f)(3) (vehicle cents-per-mile or commuting valuation of \$1.50 per one-way commute, respectively) without regard to the additional requirements contained in § 1.61-21 (e) or (f) and is deemed to have met the requirements of § 1.61-21(c).

(7) *Government employer and employee defined.* For purposes of this paragraph (m), "government employer" includes any Federal, State, or local government unit, and any agency or instrumentality thereof. A "government employee" is any individual who is employed by the government employer.

(8) * * *

Example (6). J is a United States District Judge. At the beginning of a 3-month criminal trial in J's court, a member of J's

family receives death threats. M, the division (within government agency W) responsible for evaluating threats and providing protective services to the Federal judiciary, directs its threat analysis unit to conduct a security study with respect to J and J's family. The study is conducted pursuant to internal written procedures that require an independent and objective assessment of any threats to members of the Federal judiciary and their families, a statement of the requisite security response, if any, to a particular threat (including the form of transportation to be furnished to the employee as part of the security program), and a description of the circumstances under which local transportation for the employee and the employee's spouse and dependents may be necessary for personal reasons during the time protective services are provided. M's study concludes that a bona fide business-oriented security concern exists with respect to J and J's family and determines that 24-hour protection of J and J's family is not necessary, but that protection is necessary during the course of the criminal trial whenever J or J's family is away from home. Consistent with that recommendation, J is transported every day in a government vehicle for both personal and business reasons and is accompanied by two bodyguard/chauffeurs who have been trained in evasive driving techniques. In addition, J's spouse is driven to and from work and J's children are driven to and from school and occasional school activities. Shortly after the trial is concluded, M's threat analysis unit determines that J and J's family no longer need special protection because the danger posed by the threat no longer exists and, accordingly, vehicle transportation is no longer provided. Because the security study conducted by M complies with the conditions of § 1.132-5(m)(2)(v), M has satisfied the requirement for an independent security study and an overall security program with respect to J is deemed to exist. Thus, with respect to the transportation provided for security concerns, J may exclude as a working condition fringe the value of any special security features of the government vehicle and the value attributable to the two bodyguard/chauffeurs. See *Example (1)* of this paragraph (m)(8). The value of vehicle transportation provided to J and J's family for personal reasons, other than commuting, may also be excluded during the period of protection, because its provision was consistent with the recommendation of the security study.

Example (7). Assume the same facts as in *Example (6)* and that J's one-way commute between home and work is 10 miles. Under paragraph (m)(6) of this section, the Federal Government may value transportation provided to J for commuting purposes pursuant to the value set forth in either the vehicle cents-per-mile rule of § 1.61-21(e) or the commuting valuation rule of § 1.61-21(f). Because the commuting valuation rule yields the least amount of taxable income to J under the circumstances, W values the transportation provided to J for commuting at \$1.50 per one-way commute, even though J is a control employee within the meaning of § 1.61-21(f)(6).

* * *

(r) *Volunteers*—(1) *In general.* Solely for purposes of section 132(d) and paragraph (a)(1) of this section, a bona fide volunteer (including a director or officer) who performs services for an organization exempt from tax under section 501(a), or for a government employer (as defined in paragraph (m)(7) of this section), is deemed to have a profit motive under section 162.

(2) *Limit on application of this paragraph.* This paragraph (r) shall not be used to support treatment of the bona fide volunteer as having a profit motive for purposes of any provision of the Internal Revenue Code of 1986 (Code) other than section 132(d). Nothing in this paragraph (r) shall be interpreted as determining the employment status of a bona fide volunteer for purposes of any section of the Code other than section 132(d).

(3) *Definitions*—(i) *Bona fide volunteer.* For purposes of this paragraph (r), an individual is considered a "bona fide volunteer" if the individual does not have a profit motive for purposes of section 162. For example, an individual is considered a "bona fide volunteer" if the total value of the benefits provided with respect to the volunteer services is substantially less than the total value of the volunteer services the individual provides to an exempt organization or government employer.

(ii) *Liability insurance coverage for a bona fide volunteer.* For purposes of this paragraph (r), the receipt of liability insurance coverage by a volunteer, or an exempt organization or government employer's undertaking to indemnify the volunteer for liability, does not by itself confer a profit motive on the volunteer, provided the insurance coverage or indemnification relates to acts performed by the volunteer in the discharge of duties, or the performance of services, on behalf of the exempt organization or government employer.

(4) *Example.* The following example illustrates the provisions of paragraph (r) of this section.

Example. A is a manager and full-time employee of P, a tax-exempt organization described in section 501(c)(3). B is a member of P's board of directors. Other than \$25 to defray expenses for attending board meetings, B receives no compensation for serving as a director and does not have a profit motive. Therefore, B is a bona fide volunteer by application of paragraph (r)(3)(i) of this section and is deemed to have a profit motive under paragraph (r)(1) of this section for purposes of section 132(d). In order to provide liability insurance coverage, P purchases a policy that covers actions arising from A's and B's activities performed as part of their duties to P. The value of the policy and payments made to or on behalf of A

under the policy are excludable from A's gross income as a working condition fringe, because A has a profit motive under section 162 and would be able to deduct payments for liability insurance coverage had he paid for it himself. The receipt of liability insurance coverage by B does not confer a profit motive on B by application of paragraph (r)(3)(ii) of this section. Thus, the value of the policy and payments made to or on behalf of B under the policy are excludable from B's income as a working condition fringe. For the year in which the liability insurance coverage is provided to A and B, P may exclude the value of the benefit on the Form W-2 it issues to A or on any Form 1099 it might otherwise issue to B.

Shirley D. Peterson,

Commissioner of Internal Revenue.

Approved: October 6, 1992.

Fred T. Goldberg, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 92-30941 Filed 12-29-92; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Parts 1 and 602

[T.D. 8461]

RIN 1545-AO42

Nuclear Decommissioning Fund Qualification Requirements

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the qualification requirements of a nuclear decommissioning fund.

Pursuant to former section 468A(e)(4)(C) of the Internal Revenue Code, current regulations require that nuclear decommissioning funds invest directly in permissible assets and permitted two or more such funds to combine assets for investment purposes. The Comprehensive National Energy Policy Act of 1992 repealed the investment restriction contained in section 468A(e)(4)(C). These final regulations amend the existing regulations to reflect the statutory change.

DATES: These regulations are effective December 30, 1992.

FOR FURTHER INFORMATION CONTACT: Peter C. Friedman of the Office of Assistant Chief Counsel (Passthroughs and Special Industries) at (202) 622-3110 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) to provide rules under section

468A of the Internal Revenue Code of 1986 (Code). Section 468A, relating to nuclear decommissioning costs, was added to the Code by section 91(c) of the Tax Reform Act of 1984 (Pub. L. 98-369, 98 Stat. 609). Section 1917 of the Comprehensive National Energy Policy Act of 1992 (Act) revised section 468A(e)(4) to eliminate the requirement that a nuclear decommissioning fund make investments only in "black lung" assets described in section 501(c)(21)(B)(ii) of the Code. Section 1917 also revised section 468A(e)(2) to reduce the rate of tax on nuclear decommissioning funds.

Explanation of Provisions

As a result of the repeal of the investment restrictions of section 468A(e) of the Code by section 1917 of the Act, these final regulations eliminate from the existing regulations that requirement that nuclear decommissioning funds invest in black lung assets, as well as the requirement that the funds invest directly in those assets. The Treasury Department and the Internal Revenue Service believe that Congress intended the changes made by section 1917 to shift oversight of the type of investments made by nuclear decommissioning funds to the public utility commissions. Nevertheless, when assets of a nuclear decommissioning fund are invested through an arrangement that adds an additional level of corporate tax, the schedule of ruling amounts for the fund is directly affected. These regulations, therefore, allow an electing taxpayer that invests through an unincorporated organization, within the meaning of § 301.7701-2, to request, in connection with the taxpayer's request for a schedule of ruling amounts, a ruling whether the organization is an association taxable as a corporation for federal tax purposes.

The approach in these regulations reflects the Service's response to comments received on previously issued proposed regulations in light of the recent changes to section 468A(e) by the Act. The previous proposed rules permitted black lung assets of nuclear decommissioning funds to be combined for investment purposes if certain requirements were satisfied. See 55 FR 26460 (June 28, 1990) and 56 FR 41102 (August 19, 1991).

Commentators raised two basic issues in connection with the proposed regulations. First, they requested additional guidance on the classification of master trust arrangements for the pooling of assets. Some commentators expressed the view that master trust arrangements do not constitute separate

entities for tax purposes and others suggested that even if the arrangements are entities, they are not associations taxable as corporations. However, based on a sampling of master trust arrangements submitted by the commentators, the Service continues to be of the view that these types of arrangements, as currently drafted, are separate entities for tax purposes and are classified as associations taxable as corporations under §§ 301.7701-2 and 301.7701-3. The Service believes that certain modifications to these arrangements, such as those suggested in the comments received, would cause many of the arrangements to be classified as partnerships for tax purposes, notwithstanding that the arrangements are in the form of trusts. For example, depending on the specifics of a master trust arrangement and applicable local law, changes could be made to the agreement so that the arrangement would terminate at the will of any participant and, thus, would not have the corporate characteristic of continuity of life described in § 301.7701-2(b).

To afford taxpayers time to modify existing pooling arrangements to avoid classification as an association taxable as a corporation, these regulations establish a transition period during which the Service will not challenge the classification of these arrangements. Under the final regulations, the Service will not challenge the classification of an unincorporated organization, established prior to January 1, 1993, through which the assets of a nuclear decommissioning fund are invested, for tax years beginning prior to January 1, 1995. One commentator requested that this transition period be extended to all tax years beginning before an electing taxpayer is required to request a revised schedule of ruling amounts under § 1.468A-3(i). The Service is of the view that this suggested transition period, which could extend for ten years, is too long and would unreasonably differentiate among electing taxpayers on the basis of the dates they received their most recent schedules of ruling amounts.

Second, a number of commentators argued that rulings on the classification of pooling arrangements should not be required. The final regulations adopt this view by permitting, but not requiring, an electing taxpayer for a fund that invests through an unincorporated organization to request a ruling on the classification of that organization.

These final regulations make a number of additional changes to the existing regulations to conform them to

changes made to section 468A(e) by section 1917 of the Act. In addition, these regulations delete an obsolete reference to section 6154. The duty to pay estimated taxes for a fund, as well as the penalty for underpayment are subsumed in the existing reference to section 6655. Finally, the definition of "nuclear decommissioning fund" is clarified to eliminate ambiguities in terminology throughout the regulations.

Because of the changes made by the Act (with respect to the investment restrictions and the reduction in the tax rate), in order to accurately determine a schedule of ruling amounts the Service will, pursuant to § 1.468-3(h)(2)(vi)(B)(8) and (h)(2)(ix)(C), ask all electing taxpayers who request a schedule of ruling amounts to provide information as to the types of investments made by the fund, the expected after-tax rate of return for each category of investment, and the methodology by which the after-tax rate of return was determined.

Special Analysis

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, a copy of these regulations was submitted to the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Peter C. Friedman of the Office of Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.461-1 Through 1.469-11T

Accounting, Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.468A-0 is amended as follows:

1. The entry for § 1.468A-5(a)(3)(ii) is revised.

2. An entry for § 1.468A-8 (b)(11) is added.

3. The added and revised provisions read as follows:

§ 1.468A-0 Nuclear decommissioning costs; table of contents.

* * * * *

§ 1.468A-5 Nuclear decommissioning fund—miscellaneous provisions.

(a) * * *

(3) * * *

(ii) Definition of administrative costs and expenses.

* * * * *

§ 1.468A-8 Effective date and transitional rules.

* * * * *

(b) * * *

(11) Nuclear decommissioning fund qualification requirements.

Par. 3. Section 1.468A-1(b)(3) is revised to read as follows:

§ 1.468A-1 Nuclear decommissioning costs; general rules.

* * * * *

(b) * * *

(3) The terms "nuclear decommissioning fund" and "qualified nuclear decommissioning fund" mean a fund that satisfies the requirements of § 1.468A-5. The term "nonqualified decommissioning fund" means a fund that does not satisfy those requirements.

* * * * *

§ 1.468A-2 [Amended]

Par. 4. Section 1.468A-2 (d)(2)(i) is amended by removing the reference "(a)(3)(ii)(A)" and adding "(a)(3)(ii)" in its place.

Par. 5. Section 1.468A-3 is amended as follows:

1. The third sentence of paragraph (a)(1) is amended by removing the reference "(a)(3)(ii)(A)" and adding "(a)(3)(ii)" in its place.

2. Paragraph (h)(1)(iii) is revised.

3. Paragraph (h)(2)(xii) is redesignated as (h)(2)(xv).

4. Paragraphs (h)(2)(xii) and (xiii) are reserved, and paragraph (h)(2)(xiv) is added.

5. Paragraph (i)(1)(ii) is redesignated (i)(1)(ii)(A).

6. Paragraph (i)(1)(ii)(B) is reserved.

7. The added and revised provisions read as follows:

§ 1.468A-3 Ruling amount.

* * * * *

(h) * * *

(1) * * *

(iii) Except as provided by § 1.468A-5 (a)(1)(iv) (relating to certain unincorporated organizations that may be taxable as corporations), a request for a schedule of ruling amounts must not contain a request for a ruling on any other issue, whether the issue involves section 468A or another section of the Internal Revenue Code.

* * * * *

(2) * * *

(xii) [Reserved.]

(xiii) [Reserved.]

(xiv) If the request for a schedule of ruling amounts contains a request, pursuant to § 1.468A-5 (a)(1)(iv), that the Service rule whether an unincorporated organization through which the assets of the fund are invested is an association taxable as a corporation for federal tax purposes, a copy of the legal documents establishing or otherwise governing the organization.

* * * * *

(i) * * *

(1) * * *

(ii) * * *

(B) [Reserved]

* * * * *

Par. 6. Section 1.468A-4 is amended as follows:

1. Paragraph (a) is revised.

2. Paragraph (b)(3) is revised.

3. Paragraph (c)(4) is revised.

4. Paragraph (d)(4) is removed.

5. Paragraphs (d)(5) and (d)(6) are designated as (d)(4) and (d)(5), respectively.

6. Newly designated paragraph (d)(5)(ii) is revised.

7. The revised provisions read as follows:

§ 1.468A-4 Treatment of nuclear decommissioning fund.

(a) In general. A nuclear decommissioning fund is subject to tax on all of its modified gross income (as defined in paragraph (b) of this section). The rate of tax is 22 percent for taxable years beginning in calendar year 1994 or 1995, 20 percent for taxable years beginning after December 31, 1995, and the highest rate of tax specified by section 11(b) for other years. This tax is in lieu of any other tax that may be

imposed under subtitle A of the Internal Revenue Code on the income earned by the assets of the nuclear decommissioning fund.

(b) * * *

(3) A deduction is allowed for the amount of an otherwise deductible loss that is sustained by the nuclear decommissioning fund in connection with the sale, exchange or worthlessness of any investment. A loss is otherwise deductible for purposes of this paragraph (b)(3) if such loss would be deductible by a corporation under section 165 (f) or (g) and sections 1211(a) and 1212(a).

(c) * * *

(4) *Other corporate taxes inapplicable.* Although the modified gross income of a nuclear decommissioning fund is subject to tax at the rate specified by section 468A(e)(2) and paragraph (a) of this section, a nuclear decommissioning fund is not subject to the other taxes imposed on corporations under subtitle A of the Internal Revenue Code. For example, a nuclear decommissioning fund is not subject to the alternative minimum tax imposed by section 55, the accumulated earnings tax imposed by section 531, the personal holding company tax imposed by section 541, and the alternative tax imposed on a corporation under section 1201(a).

(d) * * *

(5) * * *

(ii) The taxable income with respect to which the nuclear decommissioning fund's status as a "large corporation" is measured is "modified gross income" (as defined by paragraph (b) of this section).

Par. 7. Section 1.468A-5 is amended as follows:

1. Paragraph (a)(1)(i)(B) is revised.
2. Paragraph (a)(1)(iii) is removed.
3. Paragraph (a)(1)(v) is redesignated as (a)(1)(iii).
4. Paragraph (a)(1)(iv) is revised.
5. Paragraph (a)(3)(i)(C) is revised.
6. Paragraph (a)(3)(ii) is revised.
7. The added and revised provisions read as follows:

§ 1.468A-5 Nuclear decommissioning fund qualification requirements; prohibitions against self-dealing; disqualification of nuclear decommissioning fund; termination of fund upon substantial completion of decommissioning.

(a) * * *

(1) * * *

(i) * * *

(B) One or more funds that are to be used for the decommissioning of a nuclear power plant and that do not qualify as nuclear decommissioning

funds under this paragraph (a) can be established and maintained pursuant to a trust agreement that governs one or more nuclear decommissioning funds.

* * * * *

(iv) If assets of a nuclear decommissioning fund are (or will be) invested through an unincorporated organization, within the meaning of § 301.7701-2 of this chapter, the Internal Revenue Service will rule, if requested, whether the organization is an association taxable as a corporation for federal tax purposes. A request for a ruling may be made by the electing taxpayer as part of its request for a schedule of ruling amounts.

* * * * *

(3) * * *

(i) * * *

(C) To the extent that the assets of the nuclear decommissioning fund are not currently required for the purposes described in paragraph (a)(3)(i) (A) or (B) of this section, to make investments.

(ii) *Definition of administrative costs and expenses.* For purposes of paragraph (a)(3)(i) of this section, the term "administrative costs and other incidental expenses of a nuclear decommissioning fund" means all ordinary and necessary expenses incurred in connection with the operation of the nuclear decommissioning fund. Such term includes the tax imposed by section 468A(e)(2) and § 1.468A-4(a), any State or local tax imposed on the income or the assets of the fund, legal expenses, accounting expenses, actuarial expenses and trustee expenses. Such term does not include decommissioning costs. Such term also does not include the excise tax imposed on the trustee or other disqualified person under section 4951 or the reimbursement of any expenses incurred in connection with the assertion of such tax unless such expenses are considered reasonable and necessary under section 4951(d)(2)(C) and it is determined that the trustee or other disqualified person is not liable for the excise tax.

* * * * *

Par. 8. Section 1.468A-8 is amended by adding paragraph (b)(11) to read as follows:

§ 1.468A-8 Effective date and transitional rules.

* * * * *

(b) * * *

(11) *Nuclear decommissioning fund qualification requirements.* For tax years beginning prior to January 1, 1995, the Service will not assert that an unincorporated organization referred to in § 1.468A-5(a)(1)(iv), established prior

to January 1, 1993, through which the assets of a nuclear decommissioning fund are invested, is an association taxable as a corporation for federal tax purposes.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 9. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 10. Section 602.101(c) is amended by revising the entries for § 1.468A-3 and § 1.468A-8 to read as follows:

§ 602.101 OMB control numbers.

* * * * *

(c) * * *

CFR part or section where identified or described	Current OMB control No.
1.468A-3	1545-1269
1.468A-8	1545-1269

Michael P. Dolan,
Acting Commissioner of Internal Revenue.

Approved: December 14, 1992.

Alan J. Wilensky,
Deputy Assistant Secretary of the Treasury.
[FR Doc. 92-31057 Filed 12-29-92; 8:45 am]
BILLING CODE 4830-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 218 and 230

RIN 1010-AB58

Offsetting Incorrectly Reported Production Between Different Federal or Indian Leases (Cross-Lease Netting)

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: The Royalty Management Program of the Minerals Management Service (MMS) is amending its regulations to allow payors to correct reporting errors under certain limited circumstances by offsetting production incorrectly reported and attributed to a Federal or Indian Tribal lease or leases against underreported production on a different Federal or Indian Tribal lease or leases to which it should have been attributed (hereafter referred to as

"cross-lease netting"). The rulemaking, under specified conditions, allows cross-lease netting for purposes of determining whether an underpayment exists on which interest is owed on any Federal or Indian tribal mineral lease or leases. Also, the rulemaking allows cross-lease netting for purposes of determining whether an overpayment exists on a Federal offshore mineral lease or leases which is subject to the filing and reporting requirements of section 10 of the Outer Continental Shelf Lands Act of 1953.

EFFECTIVE DATE: February 1, 1993.

FOR FURTHER INFORMATION CONTACT: Dennis C. Whitcomb, Chief, Rules and Procedures Branch at (303) 231-3432.

SUPPLEMENTARY INFORMATION: The principal authors of this final rule are Mr. Donald T. Sant, Deputy Associate Director for Valuation and Audit, Mr. Peter Schaumburg and Mr. Geoffrey Heath, Office of the Solicitor, Washington, DC.

I. Background

Under the laws, regulations, and lease terms governing the leasing of Federal and Indian lands and the Outer Continental Shelf (OCS) for mineral production, royalty is due and reported based on the particular lease from which oil, gas, or other minerals are produced. See, e.g., the Mineral Leasing Act of 1920, as amended (MLA), 30 U.S.C. 181, et seq.; the Outer Continental Shelf Lands Act of 1953, as amended (OCSLA), 43 U.S.C. 1331, et seq.; the Mineral Leasing Act for Acquired Lands, 30 U.S.C. 351, et seq.; the Geothermal Steam Act of 1970, 30 U.S.C. 1001, et seq.; the Act of March 3, 1909, 25 U.S.C. 396; the Act of May 11, 1938, 25 U.S.C. 396a, et seq.; and regulations at 30 CFR parts 202, 206, 210, 212, 216, and 218, and 25 CFR parts 211 and 212.

Under statutes and regulations, MMS assesses interest on late payments and underpayments of royalties for lease production. See section 111(a) of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1721(a), and regulations at 30 CFR 218.54, 218.102, 218.150(d), 218.202, and 218.302. If a royalty payment is attributed to production from a different lease when payment is initially made, and therefore reported as paid for the incorrect lease, a later correction to reduce the reported royalty for the incorrect lease and increase the royalty paid on the correct lease has ordinarily resulted in an assessment for late-payment interest due on the originally underpaid lease. The assessments are issued through the

MMS' Auditing and Financial System (AFS) exception processing. Similar corrections made as a result of an MMS audit have also resulted in an assessment for late-payment interest due for the lease for which the royalty should have been reported.

In the case of offshore leases, an additional requirement is involved. Under section 10(a) of the OCSLA, 43 U.S.C. 1339(a), no refund or credit for an overpayment of royalty for an offshore lease may be made unless such refund or credit is requested within 2 years of the date the payment is made and certain procedural requirements are followed. Correction of errors such as those previously described involves such a credit for the lease for which the royalty was initially and incorrectly reported as paid. Therefore, such corrections are subject to section 10's procedural requirements and the allowed 2-year period.

Because royalty obligations are determined on a lease basis, an overpayment under one lease does not negate the existence of an underpayment under another lease for purposes of determining late-payment interest owed for the underpaid lease. Similarly, in the context of OCSLA section 10, an underpayment under one offshore lease does not negate the existence of an overpayment under another lease for purposes of submitting required requests for refund or credit under OCSLA section 10(a).

The Interior Board of Land Appeals (IBLA) has consistently upheld this principle in both contexts. Overpayments and underpayments for different production months within a single lease account will be offset during an audit by MMS or other authorized audit agencies to determine underpaid amounts on which late-payment interest is due or overpaid amounts for which a request for refund or credit must be submitted under OCSLA section 10. See *Shell Oil Co.*, 80 IBLA 634 (1981). However, IBLA has consistently held, in cases involving both late-payment interest calculations and required refund or credit requests under OCSLA section 10, that such offsetting may only occur within a single lease account during an audit period, and not between leases. Under existing MMS procedures, offsetting of overpayments and underpayments between leases is not permitted (except where both leases are included in the same unitization or communitization agreement). In the late-payment interest context, see *Mesa Petroleum Co.*, 108 IBLA 149 (1989); *Mesa Petroleum Co.*, 111 IBLA 201 (1989); *FMP Operating Co.*, 111 IBLA 377 (1989); and *Mesa*

Operating Limited Partnership, No. IBLA 87-753 (Order issued June 13, 1990). In the OCSLA section 10 context, see *Sun Exploration and Production Co.*, 106 IBLA 300 (1989); *Union Oil Co. of California*, 110 IBLA 62 (1989); *Chevron USA, Inc.*, 111 IBLA 92 (1989); and *Union Exploration Partners, Ltd.*, 113 IBLA 186 (1990).

Allowing offsetting of overpayments and underpayments between leases as a matter of course and on the initiative of the lessee or royalty payor is not feasible given the more than 20,000 leases, many of which have multiple payors, which MMS administers. Permitting offsetting on that basis effectively would require a review of all of that payor's leases (in the case of requests for refund or credit under OCSLA section 10, all of the payor's OCS leases), at least for the production month for which the offset is claimed, before an offset could be allowed. Otherwise, there would be no way of ascertaining whether the payor in fact was overpaid or underpaid, and the system would be subject to the payor's arbitrary selectivity. Such a reconciliation capability is not possible.

Moreover, allowing offsetting between leases as a matter of course could have substantial effects on ultimate recipients of royalty revenue from different categories of leases under established permanent indefinite appropriations. For example, under the MLA, each State receives 50 percent of royalties and other lease revenues (90 percent for Alaska) from leases on the Federal public domain within its boundaries. See 30 U.S.C. 191. Coastal States receive 27 percent of revenues from certain offshore leases located within the zone defined and governed by section 8(g) of OCSLA, 43 U.S.C. 1337(g) (the "8(g) zone"). Other recipients receive various portions of revenues from leases issued under other laws; e.g., the Mineral Leasing Act for Acquired Lands. See 30 U.S.C. 355. Allowing offsetting between leases without restriction as a matter of course may affect the distribution of royalty revenues to the proper recipients.

The MMS recognizes, however, that because many royalty payors report and pay for hundreds and sometimes thousands of leases, some situations arise in which a royalty payment which is otherwise correct and timely is incorrectly reported as attributed to production from one lease, when it should have been reported as attributed to production from a different lease. For example, a lessee may receive from an operator incorrect allocation figures for production from adjacent OCS leases which is commingled into a common pipeline, where the total volume of

production is correct and royalty is timely paid thereon; and subsequently corrections are submitted to revise the allocation of that total between the individual leases.

As another example, a royalty payor may inadvertently invert digits in the lease number for which royalty is being reported, but otherwise pay the royalty correctly and timely. If the incorrect lease number is in fact the number of another valid lease, the royalty report may clear the AFS system edits and the error be discovered only upon later checks or review.

These examples may occur under circumstances where the lessor/royalty owner is the same for the leases involved and the total royalty distribution to recipients of permanent indefinite appropriations is the same regardless of which lease the royalty payment is attributed to. In other words, the leases involved are within the same State in the case of onshore MLA leases (or are in the same county in the case of some leases on acquired lands), or are on the OCS (and, if within the 8(g) zone, are within the 8(g) zone and are offshore of the same coastal state), or are owned by the same Indian lessor. These examples may occur in the context of determining underpayments on which late-payment interest is due or determining overpayments for which a request for refund or credit must be submitted under OCSLA section 10.

These and other examples which could be cited have certain common characteristics which distinguish them from most royalty payment deficiencies. First, the mistake is in the nature of a reporting error rather than a substantively incorrect royalty payment or an untimely royalty payment in the first instance. Second, there is no ultimate loss of time value of money to the lessor when the reporting error is corrected. In addition, one error is the common source of both the overpayment and the underpayment for the respective leases. Moreover, there is no ultimate effect on the distribution of royalty revenues under permanent indefinite appropriations established by law; thus, there is no time value of money loss to these recipients either. Finally, the circumstances are such that the nature of the error can be proven by reliable documentary evidence. Thus, after correcting the reporting error, affected parties would be in the same financial position as if the error had not been committed. Under these circumstances, MMS does not believe that assessing late-payment charges for the underpaid lease, or disallowing a refund or credit, is justified.

The MMS therefore is amending the regulations to allow royalty payors to offset royalty overpayments for a lease or leases against underpayments for a different lease or leases, for purposes of determining the size of an underpayment on which late-payment interest is due, under limited conditions described in the next section of this preamble. Similarly, MMS is amending the regulations to allow payors to offset royalty underpayments for an offshore lease or leases against overpayments for a different offshore lease or leases, for purposes of determining whether and to what extent an overpayment exists for which a refund or credit must be requested, under similar, limited conditions described below. (Allowed offsetting is referred to as "cross-lease netting" in both contexts). Cross-lease netting will be allowed only under the specified conditions. In all other situations, the law as established by the previously cited IBLA decisions will remain unchanged.

II. Comments on Proposed Rule

The proposed rulemaking (56 FR 31891, July 12, 1991) provided for a 60-day public comment period, which ended September 10, 1991. The public comment period was subsequently extended (56 FR 46396, September 12, 1991) to September 30, 1991. Seventeen commenters submitted written comments during this period. The comments are addressed in this section.

General Comments

(a) Some commenters requested that MMS state in the preamble of the rulemaking that the cross-lease netting procedure is only voluntary and does not diminish any of the other rights of lessees to effect offsets within leases under existing law. These commenters stated that the rule should be seen as an option for the lessee to minimize the unfair imposition of late-payment penalties and to streamline offshore royalty reporting. In their view, it should not be a requirement.

Response: The rule as adopted operates to the lessee's benefit. If the lessee does not wish to avail itself of the rule's advantages, it is not required to do so. The rule therefore is already "voluntary." The rule does not govern and does not purport to address issues regarding offsets within a single lease account.

(b) The proposed rulemaking applied to all Federal leases and to all Indian leases. In the proposed rulemaking, MMS requested comments on whether Indian tribal and/or allotted leases should be excluded from the rulemaking. Several commenters from

industry objected to excluding Indian leases from the rulemaking. They argued that harmless errors should be corrected on Indian leases as contemplated by the proposed rule. One commenter stated that there are tribes and individual allottees owning numerous leases where the rule could apply and offer fairness and cost-effectiveness. On the other hand, a commenter from an Indian tribe objected to the rule stating that lease contracts between tribes and the companies create an independent property interest. They argued that failure to maintain separate lease accountability would result in the taking of the Tribe's property interest.

Response: The MMS has reviewed all comments and believes that there is no basis to exclude Indian tribal leases in the rulemaking. Indian allotted leases are excluded from the final rulemaking because there are minimal cases where the individual allottee (lessor) (or the proportion of interests held by more than one individual allottee) is the same for the leases involved. On the other hand, like Federal leases, MMS believes there will be cases where the Indian tribe (lessor) is the same for the leases involved. The rule should apply to all Federal and Indian tribal leases, since under the criteria in the rulemaking, there would be no harm to the lessor.

(c) Several commenters recommended that the rulemaking be expanded to cover lease rental payments. They argue that reporting errors can occur for rental payments and should be covered under the cross-lease netting rulemaking.

Response: The MMS does not agree with the recommendation. The scope of the rulemaking is limited to reporting errors covering production. Failure to pay rental due may result in termination of a lease, and the rental requirements must be strictly construed.

(d) One commenter supported the rule and recommended that the rule be applied retroactively.

Response: The MMS is not making this rule effective retroactively. However, there are many open cases which involve this issue and MMS will apply the policy adopted in this rule as necessary.

(e) One commenter requested that the rule be expanded to include value/price differences.

Response: The rule does not require that the royalty value of the volume erroneously attributed to an incorrect lease be the same under the correct lease as it originally was reported under the incorrect lease. For example, as a result of the same reporting error which caused the production to be attributed to the wrong lease, an incorrect price similarly may have been applied if

production from the two leases was subject to different prices under a sales contract. However, any deficiency owed when the volume is reported for the correct lease will be subject to late payment interest assessments under existing law and regulations.

(f) Several commenters argued that MMS needs to recognize that special problems can occur relative to unit or communitization allocations or adjustments that may involve different payors, different leases, and unequal volumes. Where the payor can prove that adjustments need to be made and that there would be no harm to the lessor, MMS should be able to approve these net adjustments on a case-by-case basis. The regulations should be revised to include such a provision.

Response: Offset of overpayments and underpayments between leases where the leases involved in the adjustment are included in the same unitization or communitization agreement are already permitted under existing MMS procedures.

(g) Some state representatives argued that MMS has only imposed erroneous reporting assessments for errors that prevent timely distribution of royalty revenues. The reporting errors that MMS would allow for purposes of cross-lease netting do not fall within this category. Thus, they concluded that the cross-lease netting rule will encourage, rather than discourage incorrect reporting.

Response: The MMS disagrees with the comments. Payors making cross-lease netting corrections will be subject to late or erroneous reporting assessments under 30 CFR 218.42(d).

Specific Comments

(a) In the preamble to the proposed rule, MMS stated with respect to proposed § 218.42(b): "Therefore, cross-lease netting would be allowed only under all the following conditions * * * 56 FR 31892. Several commenters recommended that MMS make it clear that cross-lease netting would be allowed if all of the following conditions are met.

Response: The MMS agrees with the comment, and it is MMS' intent to allow cross-lease netting in all situations where all the conditions listed in the rule are met.

(b) Several commenters requested MMS to modify 30 CFR 218.42(b) and 230.51(b) regarding the requirement that an error resulting in the wrong payment between two leases must be in the same production month. The commenters argued that royalty attributable to production from one lease may be inadvertently applied to another lease

and mistakenly to another production month. The rule as proposed would prohibit the netting out of these errors, when in fact, it is the same kind of harmless error that may be corrected under the rulemaking if the right month were used. They contend that the proposed restriction to use only the same production month limits the usefulness of the cross-lease netting procedure for harmless errors.

Response: The MMS agrees with the comment. The rule has been changed accordingly.

(c) Some commenters requested that MMS clarify § 218.42(b)(3) and § 230.51(b)(3) regarding the requirement that the payor submit production reports and other documentary evidence pertaining to the reporting error involving specific production. To avoid unnecessary administration, the commenter suggested that the requirement should be that additional documentation be required only on request by MMS where errors cannot be readily substantiated by the data submitted.

Response: The MMS believes that the burden of proof must be on the payor to substantiate the reporting error and assure that any correction qualifies under the cross-lease netting procedure. Therefore, information must be provided to MMS to verify the reporting error at the time of the request for the adjustment.

(d) One commenter contended that for onshore leases, the requirement that the ultimate recipient of royalty revenues be the same where cross-lease netting is contemplated unduly limits the benefits of the proposed rule and should be eliminated in 30 CFR 218.42(b)(5) and 230.51(b)(5). It argued that the recipient is paid by the Federal Government on a periodic, lump-sum basis and the limitation is not necessary because of no harmful effect.

Response: The MMS disagrees with the comments. Revenues from onshore leases are distributed to designated recipients on a monthly basis. Cross-lease netting in situations involving different recipients or permanent definite appropriations plainly would change the disbursement of revenues under those appropriations. In addition, under current law, late-payment interest paid by lessees is paid to the same recipients as the principal royalty revenues. 30 U.S.C. 191, as amended (public domain leases), 30 U.S.C. 191a (all other leases). The MMS believes that as a matter of policy, if one recipient has been deprived of funds, which it otherwise would have received earlier, because of a reporting error which caused an underpayment with respect to

the lease for which the production should have been reported, it is appropriate to continue to require the payor to pay late-payment interest, as provided under existing law and rules, which is then shared proportionately with that recipient.

(e) Some commenters recommended that the requirement to have MMS approval before effecting an offset for a reporting error be eliminated in 30 CFR 230.51(b). The commenter argued that through new accounting codes, any correction on the Report of Sales and Royalty Remittance—Oil and Gas (Form MMS-2014) could be reported and tracked to assure proper internal control. The payor would still be required to maintain sufficient documentation to support the adjustment which could be verified periodically through MMS audit.

Response: The MMS disagrees with the comments. The MMS does not want to add this verification function to the audit function because of the volume of transactions being reported each month. Companies should be required to submit documentation of erroneous reporting at the time of correction of the reports. Prior approval of the adjustments will assure effective internal control, and is not overly burdensome to the payor.

(f) One commenter suggested that if prior approval is required as stated in 30 CFR 230.51(b), then MMS should make a commitment to respond within 60-90 days from receipt of the request for authorization for cross-lease netting. The commenter stated that timely action is important in considering the impact of the accruing late-payment interest expense.

Response: The MMS agrees that the review of the request for cross-lease netting should be timely. The MMS review should be completed within 90 days if the documentation submitted for approval is complete. When a cross-lease netting request meets all of the criteria of this rulemaking, late-payment interest will be assessed only on any net underpayment. However, if cross-lease netting between offshore leases results in a net overpayment on a lease, a refund or credit of the net amount is subject to OCSLA section 10 requirements which cannot be waived.

(g) One commenter objected to the requirement that reporting errors must result in equal volumes between leases in 30 CFR 218.42(b)(1) and 230.51(b)(1). They argue that the sections recognize and accept that valuation may be different, therefore, volume differences should also be acceptable when all other conditions are met and there is no harm caused by the cross-lease netting adjustment.

Response: The MMS disagrees with the comment. The requirement remains that the total volume erroneously reported on the incorrect lease(s) must equal the total volume attributed to the correct lease(s) in the cross-lease netting adjustment, such that the payor can demonstrate that the initial underreporting and overreporting resulted from the same error. The rulemaking is amended to clarify that several leases can be involved in a cross-lease adjustment if all the other conditions are met.

(h) Several commenters objected to the requirement that the payor be the same for leases involved in the cross-lease netting adjustment under 30 CFR 218.42(b)(2) and 230.51(b)(2). They contend that whether or not the payments were by the same payor should not be a controlling factor if there is no harm to the lessor.

Response: The MMS disagrees with the comments. The cross-lease netting requirements are intended to cover reporting errors by one payor. Adjustments between payors are not reporting errors which should be reconciled by MMS. To expand the requirements to cover adjustments between multiple payors is beyond the scope and purpose of the rulemaking.

III. Summary and Discussion of Final Rule

(a) For Calculation of Late-Payment Interest

The MMS final rule will add a new provision to the regulations at 30 CFR part 218, to be designated 30 CFR 218.42, which allows cross-lease netting for purposes of determining an underpayment upon which late-payment interest is due, under certain conditions where the payor can demonstrate a plain reporting error which does not result in any ultimate loss of time value of money to a Federal or Indian lessor and which has no consequence for the ultimate recipients of royalty revenues. Therefore, cross-lease netting will be allowed only if all of the following conditions are met:

(1) The error results from attributing and reporting an equal volume of production produced from a lease or leases during a particular production month to a different lease or leases from which it was not produced for that same or another production month. This condition is necessary to ensure that offsetting will be allowed only when a genuine reporting error has occurred, as opposed to an ordinary royalty underpayment. If unrelated volumes of production from different leases could be offset, particularly if different

production months were involved, there would be no practical way to verify that only a reporting error of the type described is involved or to limit allowed offsets to situations involving such reporting errors. There would be nothing to prevent a lessee or payor from using many royalty overpayments as offsets against other unrelated royalty underpayments on other leases and manipulating corrections to its reports to avoid interest liability.

This condition does not require that the same value of production be involved when the production is re-attributed to the correct lease or leases. Ascribing a particular volume of production to the wrong lease or leases may result in a royalty value under that lease or leases which is different from the correct royalty value when the production is reported under the correct lease or leases. If the royalty attributable to the value of production as reported under the wrong lease or leases is greater than the royalty attributable to the value of production under the correct lease or leases, the lessor has not suffered any loss of time value. (The difference is an overpayment which may be credited or refunded, but subject to OCSLA section 10 limitations for offshore leases.) If the royalty attributable to the value of production under the wrong lease or leases is less than the royalty attributable to the value of production under the correct lease or leases, the lessee or payor owes the difference as additional royalty, plus appropriate late-payment interest on that royalty difference.

(2) The payor is the same for the production attributable to the leases involved. This condition is necessary for practical administration. While an allocation error by a pipeline operator, for example, could result in overreporting production on a lease(s) and underreporting an equal volume of production on another lease(s) which has a different payor and where all other necessary conditions are met, MMS believes this is not a reporting error which should be reconciled by MMS.

(3) The payor submits production reports pipeline allocation reports, or other similar documentary evidence pertaining to the specific production involved which verifies the correct production information. This condition is necessary to limit allowed offsets to the type of reporting error situations previously described by requiring reliable documentary evidence which demonstrates the reporting error. In the absence of this requirement, a payor easily could manipulate corrections to royalty reports and claim that some portion of an overpayment on a

particular lease was due to misreporting production which should have been reported on an underpaid lease, when in fact that was not the case.

(4) The lessor is the same for the leases involved (in the case of Indian tribal leases, the same tribe is the lessor of both leases). This requirement is necessary to ensure that offsetting is not permitted where one lessor has had the advantage of the time value of the overpayment on the wrong lease while a different lessor has lost the time value of the underpayment on the correct lease. In such situations, the payor should be required to pay appropriate late-payment interest to the lessor who should have had the benefit of the funds had the error not occurred and the royalty payment been made correctly.

(5) The ultimate recipients of royalty revenues under permanent indefinite appropriations are the same for, and receive the same percentage of revenue from, the leases involved. The permanent indefinite appropriations referred to include the States' 50 percent share (90 percent for Alaska) of royalties from onshore MLA leases under 30 U.S.C. 191; coastal States' 27 percent share of royalties from offshore leases within the 8(g) zone under 43 U.S.C. 1337(g); counties' 25 percent share of royalties from leases on acquired national grasslands under 30 U.S.C. 355 (incorporating the formula of 7 U.S.C. 1012) (as one example of payments made to States or counties from royalties from leases of acquired land under 30 U.S.C. 355, incorporating the formula applicable to the particular category of acquired land); and the States' 90 percent share of royalties from leases on State selected lands under 43 U.S.C. 852(a)(4) (as one example of payments made under certain specialized statutes providing for mineral leasing of a particular category of lands). While interest on late-payments or underpayments of royalty is owed to the lessor (the United States or an Indian tribe), not to a derivative recipient of royalty revenues under a permanent indefinite appropriation who does not own a property interest in the lease, this condition is appropriate to avoid an analogous inequity to the ultimate recipients of royalty revenues. Particularly since late-payment interest is shared with the ultimate recipient of royalty revenue in the same proportion as the principal royalties (see 30 U.S.C. 191 and Pub. L. 100-524, section 7, 102 Stat. 2607, 30 U.S.C. 191a), if the misreporting of production between different leases resulted in a delay in receipt of revenues by the correct recipient, it is appropriate to prohibit cross-lease netting in that circumstance.

It is the payor's burden to show by satisfactory documentation that each of these conditions has been met. A payor may make that showing either through the administrative appeals procedure of 30 CFR part 290 after receiving an invoice for late-payment interest due, or may submit such documentation to MMS informally to avoid unnecessary clogging of the appeals process where there is no real necessity for a written decision by the MMS Director. In either case, if the documentation submitted is sufficient, the late-payment interest assessment will be canceled.

The final rule applies to all Federal leases, onshore and offshore, and to all Indian tribal leases, for all minerals (oil, gas, coal, other solid minerals, and geothermal steam). As a matter of conforming amendments, MMS is amending the existing provisions at 30 CFR 218.54, 218.102, 218.150, 218.202, and 218.302 to reference the new regulation.

(b) Calculation of Overpayments Under Offshore Leases Subject to OCSLA Section 10 Credit or Refund Requests and 2-Year Allowed Period

Consistent with cross-lease netting for late-payment interest purposes (see section II(a) above of this preamble), MMS is also amending the regulations to allow cross-lease netting in limited circumstances for purposes of determining whether overpayments exist on offshore leases that are subject to the filing and reporting requirements of OCSLA section 10.

The MMS is requiring that the same general requirements for cross-lease netting apply for OCSLA section 10 purposes as are required for late-payment interest purposes. Similar to the conditions identified for late-payment interest purposes, conditions identified for OCSLA section 10 purposes are intended to restrict allowable cross-lease netting to situations where the payor can demonstrate a plain reporting error, rather than an overpayment which must be balanced by granting a refund or credit, and where the correction does not result in any ultimate loss of the time value of money to the Federal lessor and which has no consequence for any ultimate recipient of royalty revenues. Thus, both of the mineral leases must be outside the 8(g) zone, or if they are in the 8(g) zone, they must be offshore of the same coastal State.

Under the final rule at 30 CFR 230.51, cross-lease netting for OCSLA section 10 purposes will be allowed only upon the payor's submission of a written request to MMS for its approval for the payment offset. The payor will be required to

provide adequate documentation to show that all the following conditions have been met before MMS will allow cross-lease netting:

(1) The error results from attributing and reporting an equal volume of production produced from a lease or leases during a particular production month to a different lease or leases from which it was not produced for that same or another production month. This condition is necessary for reasons similar to those for the identical condition for offsetting in the late-payment interest context explained above, i.e., to ensure that offsetting will be allowed only when a genuine reporting error has occurred, as opposed to an ordinary royalty overpayment for which a request for refund and the prescribed procedures are required under OCSLA section 10. If unrelated volumes of production from different leases could be offset, particularly if different production months were involved, there would be no practical way to verify that only a reporting error of the type described is involved or to limit allowed offsets to situations involving such reporting errors. There would be nothing to prevent a lessee or payor from using many royalty underpayments as offsets against other unrelated royalty overpayments on other leases and manipulating corrections to its reports to avoid having to submit requests for refund or credit.

This condition again would not require that the same value of production be involved when the production is reattributed to the correct lease. If the royalty attributable to the production as reported under the wrong lease is greater than the royalty attributable to the production under the correct lease, the payor has not made an excess payment for which a refund or credit would be appropriate to the extent of the royalty owed under the correct lease. The difference is an overpayment which may be credited or refunded; however, the section 10 requirements would apply to that increment. If the royalty as reported under the wrong lease is less than the royalty reported under the correct lease, the lessee or payor would owe the difference as additional royalty, plus appropriate late-payment interest on the royalty difference. The entire royalty attributed to the wrong lease would be offset and no OCSLA section 10 requirements would apply.

(2) The payor is the same for the production attributable to the leases involved. This condition is necessary for practical administration for reasons similar to those for the identical

condition explained above in the late-payment interest context.

(3) The payor submits production reports, pipeline allocation reports, or other similar documentary evidence pertaining to the specific production involved which verifies the correct production information. This condition is necessary to limit allowed offsets to the type of reporting error situations previously described by requiring reliable documentary evidence which demonstrates the reporting error. In the absence of this requirement, a payor easily could manipulate corrections to royalty reports and claim that some portion of an overpayment on a particular lease was due to misreporting production which should have been reported on an underpaid lease, when in fact that was not the case, and thereby effectively nullify the OCSLA section 10 requirements.

(4) In the case of leases which are within the zone defined and governed by section 8(g) of the OCSLA, as amended, 43 U.S.C. 1337(g), the leases are located off the coast of the same State. (There is no necessity for an express condition that the lessor is the same for both leases in this context; the United States is the lessor for all leases on the OCS.) This condition is necessary for reasons similar to those in the late-payment interest context. See paragraph III(a)(5) above of this preamble. It ensures that the ultimate recipients of royalty revenues under OCSLA section 8(g)'s permanent indefinite appropriation are the same for both leases. All coastal States receive the same share, 27 percent, under section 8(g) uniformly. It is appropriate to prohibit cross-lease netting where different coastal States are involved to avoid inequity to the ultimate recipient of a portion of the royalty revenues.

If MMS approves a payor's request for a payment offset, the payor is required to submit an adjusting royalty report (Form MMS-2014) to correct its reporting to MMS' AFS. Royalties attributed to an incorrect lease under the conditions specified above and for which offset is approved by MMS are not, under the final rule, subject to the filing and reporting requirements of OCSLA section 10.

(c) Other Matters

The submission of false production data or other evidence in an attempt to improperly invoke the exception set forth in the final regulations at 30 CFR 218.42 and 230.51, to avoid requesting a refund or credit as required by section 10 of OCSLA, or to avoid payment of late-payment interest due, potentially could result in the assessment of a civil

or criminal penalty for intentional violation under section 109(d) of FOGMA, 30 U.S.C. 1719(d), and 30 CFR 241.51(b)(1)(ii) or (iii).

IV. Procedural Matters

Executive Order 12291 and the Regulatory Flexibility Act

This rulemaking may result in a loss of some revenue to royalty recipients from interest charges currently billed and collected from payors on underpayments on a lease that could be offset against overpayments on a different lease under this rule. However, this rulemaking does not result in a major increase in costs for any Federal, State, or local government agency or any individual industry or have any adverse effects on competition, employment, or productivity. Accordingly, the Department of the Interior (Department) has determined that this rule is not a major rule under Executive Order 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

Executive Order 12630

The Department certifies that the rule does not represent a governmental action capable of interference with constitutionally protected property rights. Thus, a Takings Implication Assessment need not be prepared pursuant to Executive Order 12630, "Government Action and Interference with Constitutionally Protected Property Rights."

Executive Order 12778

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

Paperwork Reduction Act of 1980

The collection of information contained in this rule on Forms MMS-2014 and MMS-4054 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 et seq. and assigned clearance numbers 1010-0022 and 1010-0040.

National Environmental Policy Act of 1969

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment; therefore, a detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(C)] is not required.

List of Subjects in 30 CFR Parts 218 and 230

Coal, Continental shelf, Electronic funds transfers, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands-mineral resources, Reporting and recordkeeping requirements.

Dated: August 19, 1992.

Daniel Talbot,

Deputy Assistant Secretary, Land and Minerals Management.

For the reasons set out in the preamble, 30 CFR parts 218 and 230 are amended as set forth below:

PART 218—COLLECTION OF ROYALTIES, RENTALS, BONUSES AND OTHER MONIES DUE THE FEDERAL GOVERNMENT

1. The authority citation for part 218 continues to read as follows:

Authority: 5 U.S.C. 301 et seq.; 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

2. A new § 218.42 is added under Subpart A—General Provisions, to read as follows:

§ 218.42 Cross-lease netting in calculation of late-payment interest.

(a) Interest due from a payor on any underpayment for any Federal mineral lease or leases (onshore or offshore) and on any Indian tribal mineral lease or leases for any production month shall not be reduced by offsetting against that underpayment any overpayment made by the payor on any other lease or leases, except as provided in paragraph (b) of this section. Interest due from a payor or any underpayment on any Indian allotted lease shall not be reduced by offsetting against any overpayment on any other Indian allotted lease under any circumstances.

(b) Royalties attributed to production from a lease or leases which should have been attributed to production from a different lease or leases may be offset to determine whether and to what extent an underpayment exists on which interest is due if the following conditions are met:

- (1) The error results from attributing and reporting an equal volume of production, produced from a lease or leases during a particular production month, to a different lease or leases from which it was not produced for the same or another production month;
- (2) The payor is the same for the lease or leases to which production was

attributed and the lease or leases to which it should have been attributed;

(3) The payor submits production reports, pipeline allocation reports, or other similar documentary evidence pertaining to the specific production involved which verifies the correct production information;

(4) The lessor is the same for the leases involved (in the case of Indian tribal leases, the same tribe is the lessor); and

(5) The ultimate recipients of any royalty or other lease revenues under any applicable permanent indefinite appropriations are the same for, and receive the same percentage of revenue from, the leases.

(c) If MMS assesses late-payment interest and the payor asserts that some or all of the interest assessed is not owed pursuant to the exception set forth in paragraph (b) of this section, the burden is on the payor to demonstrate that the exception applies in the specific circumstances of the case.

(d) The exception set forth in paragraph (b) of this section shall not operate to relieve any payor of liability imposed by statute or regulation for erroneous reporting.

3. A new paragraph (e) is added to § 218.54 under Subpart B—Oil and Gas, General, to read as follows:

§ 218.54 Late payments.

(e) An overpayment on a lease or leases may be offset against an underpayment on a different lease or leases to determine a net underpayment on which interest is due pursuant to conditions specified in § 218.42.

4. A new paragraph (d) is added to § 218.102 under Subpart C—Oil and Gas, Onshore, to read as follows:

§ 218.102 Late payment or underpayment charges.

(d) An overpayment on a lease or leases may be offset against an underpayment on a different lease or leases to determine a net underpayment on which interest is due pursuant to conditions specified in § 218.42.

5. A new paragraph (e) is added to § 218.150 under Subpart D—Oil, Gas and Sulfur, Offshore, to read as follows:

§ 218.150 Royalties, net profit shares, and rental payments.

(e) An overpayment on a lease or leases, excluding rental payments, may be offset against an underpayment on a different lease or leases to determine a net underpayment on which interest is

due pursuant to conditions specified in § 218.42.

6. A new paragraph (f) is added to § 218.202 under Subpart E—Solid Minerals—General, to read as follows:

§ 218.202 Late payment or underpayment charges.

* * * * *

(f) An overpayment on a lease or leases may be offset against an underpayment on a different lease or leases to determine a net underpayment on which interest is due pursuant to conditions specified in § 218.42.

7. A new paragraph (f) is added to § 218.302 under Subpart F—Geothermal Resources, to read as follows:

§ 218.302 Late payment or underpayment charges.

* * * * *

(f) An overpayment on a lease or leases may be offset against an underpayment on a different lease or leases to determine a net underpayment on which interest is due pursuant to conditions specified in § 218.42.

PART 230—RECOUPMENTS AND REFUNDS

1. Part 230, previously reserved, is amended by revising the part heading as set forth above, the text to read as follows:

Subpart A—General Provisions

Sec.

230.51 Cross-lease netting in calculation of overpayments under section 10 of the OCSLA.

Subpart B—Oil, Gas, and OCS Sulfur, General—[Reserved]

Subpart C—Federal and Indian Oil—[Reserved]

Subpart D—Federal and Indian Gas—[Reserved]

Subpart E—Solid Minerals, General—[Reserved]

Subpart F—Coal—[Reserved]

Subpart G—Other Solid Minerals—[Reserved]

Subpart H—Geothermal Resources—[Reserved]

Subpart I—OCS Sulfur—[Reserved]

Authority: 5 U.S.C. 301 et seq.; 25 U.S.C. 396 et seq.; 25 U.S.C. 396a et seq.; 25 U.S.C. 2101 et seq.; 30 U.S.C. 181 et seq.; 30 U.S.C. 351 et seq.; 30 U.S.C. 1001 et seq.; 30 U.S.C. 1701 et seq.; 31 U.S.C. 9701; 43 U.S.C. 1301 et seq.; 43 U.S.C. 1331 et seq.; and 43 U.S.C. 1801 et seq.

Subpart A—General Provisions

§ 230.51 Cross-lease netting in calculation of overpayments under section 10 of the OCSLA.

(a) The amount of any refund or credit for any overpayment for any lease or leases governed by the Outer Continental Shelf Lands Act (OCSLA), as amended, for any production month shall not be reduced by offsetting against that overpayment any reported underpayment by the payor on any other lease or leases, except as provided in paragraph (b) of this section.

(b) Royalties attributed to production from a lease or leases governed by the OCSLA, which should have been attributed to production from a different lease or leases governed by the OCSLA, may be offset without regard to the provisions of OCSLA section 10, 43 U.S.C. 1339, only if the payor submits a written request to Minerals Management Service (MMS), Fiscal Accounting Division, for its approval of the correction and provides adequate documentation to show that the following conditions exist and are met:

(1) The error results from attributing and reporting an equal volume of production, produced from a lease or leases during a particular production month, to a different lease or leases from which that production was not produced for the same or another production month;

(2) The payor is the same for the lease or leases to which the production was attributed and the lease or leases to which it should have been attributed;

(3) The payor submits production reports, pipeline allocation reports, or other similar documentary evidence pertaining to the specific production involved which verifies the correct production information; and

(4) In the case of leases which are within the zone defined and governed by section 8(g) of the OCSLA, as amended, 43 U.S.C. 1337(g), the leases are located off the coast of the same State.

(c) If MMS approves a correction pursuant to paragraph (b) of this section, the payor is required to submit an adjusting royalty report (Form MMS-2014) pursuant to 30 CFR part 210 to correct its reporting to the Auditing and Financial System.

(d) If MMS requires a repayment of principal royalties or assesses late-payment interest as a result of the payor having improperly offset any underpayment against an overpayment and, therefore, having failed to request a refund or credit as required by section 10 of the OCSLA, 43 U.S.C. 1339, and the payor asserts pursuant to 30 CFR

part 290 that some or all of the royalties or interest assessed is not owed pursuant to the exception set forth in paragraph (b) of this section, the burden is on the payor to demonstrate that the exception applies in the specific circumstances of the case.

(e) The exception set forth in paragraph (b) of this section shall not operate to relieve any payor of any liability imposed by statute or regulation for erroneous reporting.

Subpart B—Oil, Gas, and OCS Sulfur, General—[Reserved]

Subpart C—Federal and Indian Oil—[Reserved]

Subpart D—Federal and Indian Gas—[Reserved]

Subpart E—Solid Minerals, General—[Reserved]

Subpart F—Coal—[Reserved]

Subpart G—Other Solid Minerals—[Reserved]

Subpart H—Geothermal Resources—[Reserved]

Subpart I—OCS Sulfur—[Reserved]

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Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; Approval of amendment.

SUMMARY: OSM is announcing the approval of proposed amendments to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments (Program Amendments Number 91-1 and 91-8, and amendments transferred from 91-7C) consist of proposed changes to the Indiana Surface Mining Statute (IC 13-4.1) and Indiana Surface Mining Rules (310 IAC 12) concerning archaeology and historic preservation. The amendments are intended to provide cultural and historic resources protection provisions which are no less effective than the corresponding Federal requirements.

EFFECTIVE DATE: December 30, 1992.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Indianapolis Field Office, Office of

Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204, Telephone (317) 226-6166.

SUPPLEMENTARY INFORMATION:

- I. Background on the Indiana Program.
- II. Submission of the Amendment.
- III. Director's Findings.
- IV. Summary and Disposition of Comments.
- V. Director's Decision.
- VI. Procedural Determinations.

I. Background on the Indiana Program

On July 29, 1982, the Indiana program was made effective by the conditional approval of the Secretary of the Interior. Information pertinent to the general background on the Indiana program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Indiana program can be found in the July 26, 1982, *Federal Register* (47 FR 32107). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.15 and 914.16.

II. Submission of the Amendment

On February 10, 1987, OSM revised its regulations pertaining to cultural and historic resources (52 FR 4244). OSM notified the Indiana Department of Natural Resources (IDNR) of these changes and informed the IDNR that its program would need to be amended to be no less effective than the revised Federal regulations. This notification was provided by letter dated June 9, 1987 (Administrative Record No. IND-0492).

In an attempt to address the requirements of the June 9, 1987, letter, Indiana Senate Enrolled Act (SEA) 121 was signed into law in March of 1988. SEA 121 became Public Law 108-1988. OSM held a public hearing on the proposed amendments on June 6, 1988 (Administrative Record Number IND-0579). By itself, Public Law 108-1988 did not fully address all the issues that had been raised by OSM. The concerns of OSM regarding Public Law 108-1988 were expressed in a memorandum from OSM's Historic and Preservation Officer, to the Director of OSM's Indianapolis Field Office dated July 11, 1988 (Administrative Record No. IND-0597). Nevertheless, IDNR and OSM initially felt that rules could be developed which would address the remaining OSM issues.

A number of meetings occurred between various parties (IDNR, OSM, Indiana's Division of Historic Preservation and Archeology (DHPA), the archeology community, and the coal industry) in an attempt to develop

acceptable rules. In the summer of 1989, OSM reviewed two distinct versions of rules developed to implement Public Law 108-1988. One version was developed jointly by the Division of Reclamation (DOR) and the DHPA. The other version had been developed by the Indiana Coal Council, Inc. By letter dated September 14, 1989 (Administrative Record No. IND-0679), OSM determined that neither of the proposed rules would satisfy the OSM requirements.

IDNR then proposed statutory changes to address the OSM requirements and provide for the development of acceptable implementing rules. These changes were made through SEA 378 (Public Law 104-1990). Regulations to implement the new statutory provisions were to follow.

By letter dated February 15, 1991 (Administrative Record No. IND-0835), the IDNR submitted a proposed amendment (Amendment #91-1) to the Indiana program statutes at the Indiana Code (IC). The proposed amendment is part of Indiana's 1990 Senate Enrolled Act No. 378 (Pub. L. 104-1990). The amendment would make changes to existing sections IC 13-4.1-3-3, IC 13-4.1-3-3.1, IC 13-4.1-4-3.1, and IC 13-4.1-14-1 concerning cultural and historic protection. By undated letter received by OSM on July 10, 1991 (Administrative Record No. IND-0902), the IDNR submitted a proposed amendment (Amendment #91-8) to the Indiana program rules at Indiana Administrative Code (IAC) 310 IAC 12-0.5, 12-2, and 12-3. The proposed amendment is intended to provide State rules to implement and enforce the Indiana archeological and historic preservation statutes at Public Law 108-1988 (SEA 121) as amended by Public Law 104-1990 (SEA 378) and SEA 154 (discussed below). Together, the proposed statutes and rules are meant to provide for the archeological and historic preservation part of the State program to be no less effective than the Federal provisions.

By letter dated June 4, 1991 (Administrative Record No. IND-0894), the IDNR submitted proposed amendment #91-7 to the Indiana program at IC 13-4.1. Two of the proposed amendments, which were enacted as part of Indiana's 1991 Senate Enrolled Act 154, (amendments to IC 13-4.1-4-3.1 and IC 13-4.1-14-1) concern cultural and historic amendments.

The Director's decision concerning these amendments was deferred and these amendments were subsequently transferred by OSM from the June 4, 1991, submittal of amendment #91-7 to

amendment #91-1 and are addressed in this notice (see 57 FR 27928; June 23, 1992).

By letter dated June 15, 1992 (Administrative Record Number IND-1098), the IDNR submitted to OSM, proposed changes to program amendment 91-8 at 310 IAC 12-2-2 and 310 IAC 12-3-112. OSM announced receipt of the proposed changes in the August 19, 1992, *Federal Register* (57 FR 37498), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendments. The public comment period ended on September 3, 1992.

By letter dated August 26, 1992 (Administrative Record Number IND-1136), OSM informed the IDNR of several concerns OSM had with the proposed provisions. A meeting was held on September 17, 1992 (Administrative Record Number IND-1155), to discuss and resolve OSM's concerns.

OSM announced receipt of the proposed amendment #91-1 in the March 21, 1991, *Federal Register* (56 FR 11980), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on April 22, 1991. The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

OSM announced receipt of the proposed amendment #91-8 in the August 9, 1991, *Federal Register* (56 FR 37868) and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on September 9, 1991. The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

OSM announced receipt of the proposed amendments submitted under SEA 121 (P.L. 108-1988) in the May 10, 1988, *Federal Register* (53 FR 16560), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on June 9, 1988. The scheduled public hearing was held on June 6, 1988.

OSM announced receipt of amendment 91-7 in the July 9, 1991, *Federal Register* (56 FR 31093), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on

August 8, 1991. The scheduled public hearing was not held as no one requested an opportunity to provide testimony.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Indiana program. Revisions which are not discussed below concern nonsubstantive wording changes.

1. IC 13-4.1-1-3 Definitions

a. Higher or Better uses

Indiana proposes to add this definition to mean postmining land uses that have a higher economic value or nonmonetary benefit to the landowner or the community than the premining land uses. The Director finds that the proposed definition is identical to and no less effective than the Federal definition of "higher or better uses" at 30 CFR 701.5.

b. Substantial Legal and Financial Commitments in a Surface Coal Mining Operation

Indiana proposes to add this definition to mean, for purposes of IC 13-4.1-14 (the Indiana provisions concerning designation of lands unsuitable for surface coal mining) significant investments that have been made on the basis of a long term coal contract in power plants, railroads, coal handling facilities, preparation facilities, extraction facilities, or storage facilities, and other capital intensive activities, such as the following:

(A) Improvements or modification of coal lands within, for access to, or in support of surface coal mining and reclamation operations.

(B) Acquisition of capital equipment for use in, for access to, or for use in support of surface coal mining and reclamation operations.

The proposed definition is nearly identical to part of the counterpart Federal definition at 30 CFR 762.5, and differs in two respects. The proposed language which provides that significant legal and financial commitments means that significant investments have been made on the basis of a long term coal contract is substantively identical to Federal language at 30 CFR 762.5. The proposed rule differs from the Federal language in that the proposed rule provides examples of "other capital intensive activities" which qualify under the proposed definition because they are based on a long term coal contract. The Federal definition does

not provide such examples. However, the examples provided are not inconsistent with the Federal definition and similar language has been approved by OSM for use in other regulatory programs (for example, Kentucky; 50 FR 47728, November 11, 1985). The Federal definition also contains language which clarifies that costs of acquiring the coal in place, or the right to mine it alone without other significant investments based on a long term contract are not sufficient to constitute substantial legal and financial commitments. The proposed definition does not contain this clarification. However, the implementing definition in the Indiana regulations at 310 IAC 0.5-122 does contain the clarification that costs of acquiring the coal in place or of the right to mine it without significant investments that have been made on the basis of a long term coal contract, alone are not sufficient to constitute substantial legal and financial commitments. Therefore, the Director finds that the proposed definition, in concert with the implementing definition at 310 IAC 0.5-122, is no less effective than the Federal definition.

2. IC 13-4.1-2-4 Petition to Promulgate, Amend or Repeal Rule; Procedure

Throughout this provision Indiana is proposing to substitute the word "adopt" in place of "promulgate." This change does not render the section less stringent than section 201 of SMCRA.

Indiana proposes to add a new subsection (c) to provide that a petition must specify the petitioner's proposed adoption, amendment, or repeal of a rule. This is in accordance with section 201(g)(2) of SMCRA, which requires that the petition "shall set forth the facts which it is claimed established that it is necessary to issue, amend, or repeal a rule under this Act."

In addition, Indiana proposes to add a sentence to subsection (d) (formerly subsection (c)) to provide that the Natural Resources Commission (NRC) may not hold a public hearing if the petition is incomplete. This is consistent with 30 CFR 700.12(c), which gives the regulatory authority discretion in granting a hearing (50 FR 14902, 14917; March 13, 1979).

3. IC 13-4.1-3-3(a)(13) Application for Permit; Maps

Indiana proposes to amend IC 13-4.1-3-3(a)(13) which currently requires the applicant to identify on maps all manmade features and significant archaeological and historic sites. The proposed language requires the identification of all manmade features and archaeological and historical sites

known by the Division of Historic Preservation and Archaeology (DHPA) of the IDNR. In its submittal of this amendment, Indiana stated that deletion of the term "significant" means that all archaeological and historic sites must be shown on a map, not just those which may be "significant."

The proposed provision limits the information on archeological and historical sites to that known by the DHPA. In a similar vein, several commenters to analogous proposed Federal regulations at 30 CFR 779.12 (52 FR 4258; February 10, 1987) concerning required permit information asserted that permit applicants should be required to obtain information not only from the State Historic Preservation Officer, but also from relevant professional and amateur societies, museums, universities, and other appropriate experts. In response, OSM stated that it is unduly burdensome and unnecessary to place this requirement on permit applicants. State Historic Preservation Officers are the official representatives of historic resources in the States. As such, they can be expected to possess the relevant information concerning such resources. In Indiana, the DHPA can be expected to possess such information.

In the meeting held on September 17, 1992 (Administrative Record Number IND-1155), the IDNR acknowledged that all sources of information must be considered for a permittee to meet the Indiana cultural and historic resources protection requirements. Under the process developed by the IDNR, a permittee would request the comments and evaluation of the IDNR's Division of Historic Preservation and Archeology (DHPA). The DHPA would conduct a search and evaluation to describe and identify the nature of cultural, archeological, and historic resources in or within 1,000 feet of the proposed permit area. If the DHPA has sufficient information to describe and identify the resources, the DHPA will provide its findings to the permittee. If the DHPA determines that it does not have sufficient information to describe and identify the resources, the DHPA will send its findings, in writing, to the IDNR's Division of Reclamation and to the permittee. In Indiana, the director of the IDNR is the State Historic Preservation Officer, and the State Historic Preservation Officer's duties regarding the Indiana program are carried out by the Chief, Division of Historic Preservation and Archeology. The Division of Reclamation will evaluate all the information obtained (from the permittee, the DHPA, and the Division of Reclamation archeologist). If

the Division of Reclamation concludes that additional information is needed, the Division of Reclamation will require the permittee to obtain the information. In addition, the IDNR asserted that protection is also provided to Indiana's cultural and historic resources in that all permit decisions of the IDNR are subject to the Indiana program's public review provisions.

In consideration of the information above, the Director concludes that the IDNR has an established process by which the IDNR can assure that each application will describe and identify the nature of cultural, archeological, and historic resources and that such descriptions and identifications shall be based on information from all available sources.

Therefore, the Director finds that the proposed provision is no less stringent than SMCRA at section 507(b)(13) and no less effective than the Federal regulations at 30 CFR 779.12.

4. IC 13-4.1-3-3.1 Archeological and Historic Sites; Additional Information for Permit

This new section is added to authorize the director of IDNR to require an applicant to submit additional information concerning the identity, location and nature of archeological and historic sites in or within 1,000 feet of the permit area in accordance with rules adopted to implement this provision. The proposed provision requires that the rules developed by the Indiana Natural Resources Commission (NRC) to implement IC 13-4.1-3-3.1 shall provide that the director of IDNR may require a permit applicant to identify and evaluate important archeological and historic sites through searches of the records of research institutions and the DHPA, field investigations, or other appropriate investigations according to standards incorporated in the rules. The provision also requires that the rules developed by the NRC to implement this provision must be consistent with the principles set forth in IC 13-4.1-4-3.1(c).

The proposed provision differs from the Federal regulations at 30 CFR 779.12(b) and 783.12(b) in that the proposed Indiana provision only requires the permit applicant to submit additional information concerning archeological and historical sites for sites that are within 1,000 feet of the permit area. The Federal regulations use the term "adjacent area" rather than limiting the required information to that within 1,000 feet of the permit area. In its April 19, 1991, explanation of the purpose of the proposed rules, Indiana stated that the 1,000-foot criterion is a

reasonable extent beyond the mine permit boundary and that all underground mining shadow areas, plus a 1,000-foot parameter will be considered. In addition, Indiana pointed out that the permit boundaries must encompass all surface effects and that blasting limits are established for each permit to ensure no damage outside the permit area.

In the preamble to the Federal Register notice in which the term "adjacent area" was approved, OSM noted that the language of the definition was written to rely only on adverse impacts on protected resources, rather than on a particular spatial concept. That is, "[t]he area determined to be within the 'adjacent area' must be defined within the context of the particular resource being evaluated and often will depend upon local conditions. A further resolution of the term will be accomplished either on a permit-by-permit basis or as part of a State program" 48 FR 14814, 14819 (April 5, 1983). Indiana has decided to establish "adjacent area" on a programmatic basis in a State program" by using 1,000 feet. 48 FR at 14818. This is no less effective than the Federal regulation because the State is allowing flexibility in its application of the 1,000 foot parameter. Indiana's use of the 1,000-foot criterion is reasonable for the purpose of information to be included in the permit application by the applicant.

Such flexibility was explained in the meeting held on September 17, 1992 (Administrative Record Number IND-1155). The IDNR clarified that the proposed 1,000-foot limit: (1) Does not prohibit the DHPA and the IDNR from reviewing information pertaining to resources which may be beyond the 1,000-foot limit; (2) does not prohibit the DHPA from recommending to the Division of Reclamation that additional information is needed to protect resources which may be beyond the 1,000-foot limit; and (3) does not prevent the IDNR from requiring additional information to identify and protect resources which may be beyond the 1,000-foot limit. In addition, the IDNR stated that the Indiana program contains requirements that a permittee prevent off-site impacts. This would include impacts due to subsidence and blasting. The IDNR asserted that the shadow area of an underground mine is part of the approved permit area. Other known features are identified up to 1,000 feet beyond the permit boundary which would include historic structures. The 1,000-foot distance beyond the permit boundary would contain any subsidence because of

Indiana's geological conditions. The Indiana program's blasting rules protect resources beyond the 1,000-foot limit. Such standards could involve the control of ground vibration, fly rock, and air blast.

The Director finds, therefore, that the proposed provision at IC 13-4.1-3-3.1 is no less effective than the Federal regulations at 30 CFR 779.12(b).

5. IC 13-4.1-4-2 Objections; Informal Conference or Public Hearing

Indiana proposes to amend subsection (a) by adding language which provides that a request for an informal conference under subsection (a) must:

(1) State specifically the objections of the person requesting the conference; and

(2) If the person requesting the conference is not the officer or head of a Federal, State, or local governmental agency or authority, identify the interest of the person who is or may be affected by the proposed operation.

SMCRA at section 513(b) and the implementing regulations at 30 CFR 773.13(c) provide that any person having an interest which is or may be adversely affected shall have the right to file written objections and request an informal conference. Section 773.13(c) goes on to provide that the requestor must summarize the issues. The proposed amendment would add to the counterpart Indiana provisions a requirement that the requestor must specifically identify both their objections and the interest which is or may be affected by the proposed operation. While there are no direct counterparts in SMCRA or the Federal regulations to the proposed requirements that a person identify their objections and interest which may be affected, the Director finds that such a requirement is not inconsistent with SMCRA and the Federal regulations and is, logically, implicit in the Federal provisions. That is, where SMCRA at 513(b) provides that a person may "file written objections," it is a reasonable interpretation that "written objections" include statements which identify the objections and the interest which may be adversely affected.

Indiana is also proposing to amend subsection (b) to add new paragraphs (2) and (3). Paragraph (2) provides that the NRC may not hold a conference if the request fails to comply with the requirements of subsection (a). Paragraph (3) provides that the NRC may not hold a conference if the objections do not concern a matter within the scope of IC 13-4.1 or the rules established by the NRC. There are no direct Federal counterparts to the

proposed language. The Director finds, however, that the proposed language is consistent with the new provisions proposed for subsection (a), and is not inconsistent with SMCRA and the Federal regulations. As stated above, it is a reasonable interpretation that "written objections" include statements which identify the objections and the interest which may be adversely affected. If such objections are not provided or if those objections do not concern matters within the scope of SMCRA, the regulatory authority would have no basis to act.

6. IC 13-4.1-4-3.1 Listing on NRHP or Indiana SRHSS

This new section is added to provide for the consideration of National Register of Historic Places (NRHP) and Indiana State Register of Historic Sites and Structures (SRHSS) resources in permit approvals, rules, and the availability of grants.

Indiana has added subsection (a) to provide that the director of IDNR not approve a permit application unless the director of IDNR states in writing that the director of IDNR has considered the effects of the proposed mining operation on any place listed on or eligible for listing on the NRHP or the Indiana SRHSS. The changes will afford the same protection to State Register sites as is provided to National Register sites. The Director finds these changes to be substantively identical and no less effective than the Federal regulations at 30 CFR 773.15(c)(11) which require such a finding concerning the NRHP.

Indiana proposes to add subsection (b) to provide that the director of the IDNR may impose conditions on a permit for the protection of properties or sites listed on or eligible for listing on the NRHP or the Indiana SRHSS requiring that mining operations not occur in the areas occupied by the properties or sites or that measures be implemented to mitigate the effects of the operation upon those properties or sites before mining.

SMCRA at section 522(e) provides that no surface coal mining operations, except those which exist on the date of enactment of SMCRA or which are subject to valid existing rights, shall be permitted which will adversely affect any publicly-owned park or places included in the NRHP unless approved jointly by the regulatory authority and the Federal, State, or local agency with jurisdiction over the historic site. That is, section 522(e) prohibits mining which will adversely affect NRHP sites.

The implementing Federal regulations at 30 CFR 780.31(b) and 784.17(b) provide that the regulatory authority

may require the applicant to protect historic or archeological properties listed on or eligible for listing on the NRHP through appropriate mitigation and treatment measures. The proposed Indiana language provides the regulatory authority with the authority to require the applicant to take appropriate mitigation or treatment measures. The Indiana language is, therefore, consistent with SMCRA and the Federal regulations.

Subsection (c) of IC 13-4.1-4-3.1 is added to provide a list of general principles which are intended to guide the implementation of section IC 13-4.1-4-3.1. The proposed provision contains the following general principles: (1) The NRC's rules may not prohibit the use of information from any source and shall recognize the responsibilities of the State Historic Preservation Officer (SHPO) under IC 14-3-3.4-3 and IC 14-3-3.4-6. This provision is consistent with SMCRA, and the Federal regulations at 30 CFR 779.12(b)(1) which provide that permit applications shall describe the nature of cultural, historic, and archeological resources using all available information including information from the SHPO and from local archeological, historical, and cultural preservation agencies. See Finding 3, above, for additional information concerning Indiana's proposed process for implementing this provision.

Proposed principle 2: The NRC's rules must provide for participation by professional and amateur archeologists or related experts in any field investigations, studies, or records searches required by the director of IDNR under IC 13-4.1-4-3.1. This provision is consistent with SMCRA and the Federal regulations at 30 CFR 779.12 which requires descriptions of the nature of cultural, historic, and archeological resources be based on all available information. See Finding 3, above, for additional information concerning Indiana's proposed process for implementing this provision.

Proposed principle 3: The NRC's rules must strive to ensure that field investigations and studies are required only where a substantial likelihood exists that important and significant archeological or historic sites are present. The Federal regulations at 30 CFR 779.12(b)(2) and 783.12(b)(2) provide that the regulatory authority may require the applicant to identify and evaluate important historic and archeological resources that may be eligible for listing on the NRHP, through the conduct of field investigations. In the preamble to these Federal applications OSM stated that in general,

the regulatory authority should strive to limit survey requirements to situations in which there is a substantial likelihood of important resources being found (52 FR 4257-59; February 10, 1987). OSM also stated that it is appropriate for the regulatory authority to make such decisions on a case-by-case basis. The Director finds, therefore, that the proposed provision is consistent with SMCRA and the Federal regulations.

Proposed principle 4: In considering impacts on a property or site eligible for listing on the NRHP, the director of IDNR shall consider: (A) Based on information available from the DHPA, the relative importance of the property or site compared to others in Indiana listed on or eligible for listing on the NRHP; and (B) The cost of an investigation of the permit area or site as estimated by the applicant. A decision that an investigation is not required may not be based on cost alone.

There is no direct Federal counterpart to this section. However, in the preamble to the Federal rules, commenters were concerned that predictive modeling techniques would be precluded and that all historic resources would "be preserved, undisturbed or mitigated at all costs regardless of the sites' historic value in relation to other similar sites outside the impact area" (52 FR 4244, 4250; February 10, 1987). OSM stated that this was not the case and encouraged "regulatory authorities to make decisions concerning historic resources which balances the interest of the public in such resources against the need to mine coal" (52 FR 4250). OSM cited to the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation which "is based on the concept that decisions about historic properties should take place within the historic context of the area, including what other similar resources occur" (52 FR 4250). Thus, Indiana's approach of balancing the relative importance of a site to other sites and the cost of an investigation is that type of flexible approach contemplated by OSM and is therefore not inconsistent with SMCRA and the Federal regulations.

Proposed principle 5: Section IC 13-4.1-4-3.1 does not authorize rules that impair the ownership of any artifacts or other material found on private land. There is no direct Federal counterpart to this provision. However, an analogous situation exists at section 714(g) of SMCRA. Section 714(g) prohibits the increasing or diminishing of property rights. Thus, the provision is not

inconsistent with SMCRA and the Federal regulations.

Proposed section (d) of IC 13-4.1-4-3.1 provides that the Director of IDNR may investigate the possibility of obtaining Federal or private monies to defer the cost of private individuals of measures required by the Director of IDNR under section IC 13-4.1-4-3.1 and may apply for any such monies so identified. While there is no direct Federal counterpart this provision is not inconsistent with SMCRA or the Federal regulations, because it would reduce the cost to the applicant.

Proposed subsection (e) of IC 13-4.1-4-3.1 provides that in making the finding required by section IC 13-4.1-4-3.1, the Director of IDNR shall take into account the general principles set forth in subsection (C) of IC 13-4.1-4-3.1. While there is no direct Federal counterpart this provision is not inconsistent with SMCRA and the Federal regulations.

7. IC 13-4.1-4-5 Notice of Approval or Disapproval of Application; Hearing

Indiana proposes to amend this provision by adding at subsection (c) a provision that the request for a hearing must include an identification of the person's interest that is or may be affected by the approval or disapproval of the application. This proposed change is consistent with other proposed changes discussed above (see Findings 2 and 5 above) which require that a petitioner specify the proposed adoption, amendment, or repeal of a rule (IC 13-4.1-2-4) and that a request for an informal conference under IC 13-4.1-4-2(a) (concerning any person with an interest which is or may be adversely affected by a proposed application) must specify the person's objections and identify the interest which is or may be affected.

There is no direct Federal counterpart to the proposed language. This language can be logically inferred from section 514(c) of SMCRA. This will prevent frivolous appeals by individuals that do not have an adversely affected interest. The Director finds, however, that the proposed language is not inconsistent with SMCRA at section 514(c) and the Federal regulations at 30 CFR 773.13(c).

8. IC 13-4.1-14-1 Lands Unsuitable; Planning

This section is amended at subsection (a)(3) to add the word "any" so the provision provides that no surface coal mining will exist which will adversely affect any publicly-owned park or "any" place included in the NRHP or the Indiana SRHSS or natural landmarks included in the NRHP unless approved

jointly by the director of IDNR and the Federal, State, or local agency with jurisdiction over the park or the historic site. With this amendment, the protection is applied to privately-owned NRHP and Indiana SRHSS sites as well as those publicly owned. Therefore, the Director finds that the proposed amendment is no less effective than the Federal regulations at 30 CFR 761.11(c).

New subsection (b) is added to provide that if valid existing rights exist or joint agency approval is to be obtained under subsection IC 13-4.1-14-1(a)(3), adverse impacts of mining shall be minimized. Subsection (a)(3) provides that no surface coal mining operation may exist which will adversely affect any publicly owned park or any place included in the NRHP or the Indiana SRHSS or natural landmarks included in the NRHP unless approved jointly by the NRC and the Federal, State or local agency with jurisdiction over the park or the historic site. Indiana's rules to implement this provision are provided at 310 IAC 12-2-2(h). The Director finds the proposed language to be substantively identical to the Federal regulations at 30 CFR 780.31(a)(2).

9. Senate Enrolled Act No. 121, Section 8

Indiana has added this non-codified section to Indiana Senate Enrolled Act (SEA) No. 121 to provide that IC 13-4.1-3-3.1 and IC 13-4.1-4-3.1, as added by SEA 121, and the rules adopted under these sections by the NRC may not be enforced if and to the extent that any Federal court holds that SMCRA does not authorize the requirements of records searches, field investigations, or other studies in connection with application for surface coal mining operations. If a Federal court of competent jurisdiction held that such provisions in SMCRA or the Federal regulations are unconstitutional or otherwise invalid, such provisions would be unenforceable by OSM. There is no direct Federal counterpart. This section is similar to another Indiana amendment which OSM approved on July 26, 1982 (see 47 FR 32071). Therefore, the Director finds that the proposed non-codified section will not render the program less effective and is not inconsistent with SMCRA and the Federal regulations.

10. 310 IAC 12-0.5-48 "Fragile Lands" Defined

Indiana proposes to amend this definition by: Changing at subsection 48(3), the term "features" to "formations;" adding a new subsection at 48(4) to read "Paleontological sites;"

and changing at subsection 48(5), "landmark sites" to read "landmarks." The Director finds that these changes are identical to the Federal examples and, therefore, the Indiana definition is no less effective than the Federal definition of "Fragile lands" at 30 CFR 762.5.

11. 310 IAC 12-0.5-59 "Historic Lands" Defined

Indiana proposes to amend this definition by making various changes to the language of the definition so the language is identical to that of the Federal definition at 30 CFR 762.5. The Director finds that the amended definition is substantively identical to the Federal definition.

12. 310 IAC 12-2-1 Areas Where Mining is Prohibited or Limited

a. This provision is amended to add at subsection 1(1) protection for study rivers and study river corridors established in any guidelines pursuant to the Wild and Scenic Rivers Act (16 U.S.C. 1276). This Director finds that the proposed revisions are substantively identical to the Federal regulations at 30 CFR 761.11(a).

b. In subsection 1(3), the words "publicly owned site" are deleted and replaced by the word "place." In the phrase, "publicly owned natural landmarks," the words "publicly owned" are deleted. The words "publicly owned National Register or State Register Site" are deleted and replaced by the word "place." With these changes, the provision extends protection to privately owned places as well as those publicly owned. The Director finds these provisions to be no less stringent than SMCRA at section 522(e)(3) and no less effective than the Federal regulations at 30 CFR 761.11(c).

c. Numerous other nonsubstantive changes are made throughout 310 IAC 12-2-1.

13. 310 IAC 12-2-2 Procedures

a. In subsection 2(c), Indiana proposes to add language to provide that if requested by an agency, the Director of IDNR may extend the 30-day response period by an additional 30 days. The proposed language also provides that if no response is received within the 30-day period, or 60-day extended period, the Director of IDNR may make necessary determinations based upon the information available. The Federal regulations at 30 CFR 761.12(b)(2) also provide that the National Park Service or the U.S. Fish and Wildlife Service shall be notified of any request for a determination of valid existing rights pertaining to areas within the

boundaries of areas under their jurisdiction and shall have 30 days from receipt of the notification in which to respond. In the meeting held on September 17, 1992 (Administrative Record Number IND-1155), the IDNR stated that under 310 IAC 12-3-106(e)(1), the U.S. Fish and Wildlife Service and the National Park Service would be notified of any request for a determination of valid existing rights pertaining to areas within the boundaries of areas under their jurisdiction. The Director finds that the proposed language is substantively identical to the Federal regulations at 30 CFR 761.12(b)(2). In addition, the Director finds that notification of the U.S. Fish and Wildlife Service and the National Park Service under 310 IAC 12-3-106(e)(1) is no less effective than the Federal regulations at 30 CFR 761.12(b)(2) which requires such notice.

b. Subsection 2(h) is amended in two places by deleting the word "site" and adding in its place the word "place." The counterpart Federal regulations at 30 CFR 761.12(f)(1) also use the word "place." Therefore, the Director finds that the proposed changes are no less effective than the Federal regulations.

Subsection 2(h)(2) is amended by adding that the Director of IDNR, upon request by the appropriate agency, may grant an extension to the 30-day period for an additional 30 days. The Director finds that the proposed language is substantively identical to the Federal regulations at 30 CFR 761.12(f)(1) which also authorize granting a 30-day extension to appropriate agencies.

c. Subsection 2(i) is amended to provide that if 310 IAC 12-2-2(h) applies a permit for surface coal mining operations shall not be issued unless jointly approved by all affected agencies. The Director finds that the proposed amendments are substantively identical to and no less effective than the counterpart Federal regulations at 30 CFR 761.12(f)(2).

d. Subsection 2(k) is amended to delete the phrase "the date of enactment" and to add in its place "August 3, 1977." This change precisely, and clearly, places August 3, 1977, as the date of enactment (of SMCRA). The Director finds the change to be consistent with and no less effective than the counterpart Federal language at 30 CFR 761.12(h) which uses the phrase "date of enactment."

Subsection 2(k) is amended by adding that a determination under subsection 2(k) is also subject to the administrative orders and procedures under IC 4-21.5. The Director finds the proposed language is consistent with and no less effective than the Federal regulations at

30 CFR 761.12(h) which provide that such a determination shall be subject to administrative and judicial review under 30 CFR 775.11 and 775.13.

Subsection 2(k) is also amended to change two incorrect references to Federal regulations to the correct citations. The Director finds the proposed changes are no less effective than the counterpart Federal regulations at 30 CFR 761.12(h).

14. 310 IAC 12-3-13 *Exploration of More Than 250 Tons; Special Requirements*

This section is amended to add a requirement at new subsection (a)(1) that an application for exploration operations removing more than 250 tons shall include a statement of why extraction of more than 250 tons of coal is necessary for exploration. The Director finds that this addition is substantively identical to the Federal regulations at 30 CFR 772.12(b)(7).

Subsection (a)(3)(A)(i) is amended by deleting language which specifies that information concerning surface topography, geological, surface water, and other physical features should be included in the required narrative. The Director finds that the deletion of the language does not render the Indiana provision less effective than the counterpart provision at 30 CFR 772.12(b)(3) which also requires a description of an exploration area, but which does not specify the details of its content.

Subsection (a)(3)(A)(iv) is amended to require a narrative description of cultural, archeological, or historic resources listed or eligible for listing on the NRHP or the Indiana SRHSS, and any other information which the director of IDNR may require regarding known or unknown cultural, archeological, or historic resources consistent with 310 IAC 12-3-29 or 310 IAC 12-3-67. The Director finds these changes to be substantively identical to the counterpart Federal regulations at 30 CFR 772.12(b)(8).

Subsection (a)(3)(C) is amended to require that the exploration and reclamation plan include the estimated amounts of coal to be removed and a description of the methods used to determine these amounts. The Director finds this proposed language to be substantively identical to the Federal regulations at 30 CFR 772.12(b)(6).

Subsection (a)(4) is amended to add language which provides that each application for approval of exploration operations shall include, if the surface is owned by a person other than the applicant, a description of the basis upon which the applicant claims the

right to enter that land for the purpose of conducting exploration and reclamation. The Director finds the proposed language to be substantively identical to the counterpart Federal language at 30 CFR 772.12(b)(13).

Numerous other nonsubstantive changes are proposed for 310 IAC 12-3-13 which the Director finds to be no less effective than the Federal regulations at 30 CFR 772.12.

15. 310 IAC 12-3-29 *(Surface) and 310 IAC 12-3-67 (Underground) Permit Applications; Cultural and Historic Resources*

Subsections (a) are amended to require that each application describe and identify the nature of cultural, archeological, and historic resources in or within 1,000 feet of the proposed permit area. The description shall be based on information obtained from the DHPA. In its submittal of these amendments, Indiana stated that the 1,000-foot criterion was added to more specifically define the term "adjacent areas," as used at 30 CFR 779.12(b)(1).

The Federal regulations at 30 CFR 701.5 define "adjacent area" as the area outside the permit area where a resource or resources, determined according to the context in which adjacent area is used, are or reasonably could be expected to be adversely impacted by proposed mining operations, including probable impacts from underground workings. In a preamble discussion of the definition of "adjacent area," OSM stated that the size of the adjacent area could vary on a case-by-case basis depending upon whether impacts on water, fish and wildlife, cultural resources, or others are being considered (48 FR 14818, April 5, 1993). OSM also stated that, alternatively, the size of the adjacent area could also be established on a programmatic basis in a State program. Indiana has chosen to establish the size of the adjacent area concerning cultural resources on a programmatic basis. That is, Indiana has concluded that 1,000 feet is the area within which cultural resources in Indiana could be adversely impacted by mining operations. In its April 19, 1991, explanation of the 1,000-foot criterion, Indiana asserted that the criterion is justified because: (1) Permit boundaries must encompass all surface effects; (2) Blasting limits are established for each permit to ensure no damage; (3) All underground mining shadow areas, plus the 1,000-foot perimeter are considered; and (4) the 1,000-foot limit is a reasonable extent beyond a mine permit boundary. For additional information concerning the 1,000-foot limit, see Finding 4, above.

As discussed above in Finding 4, the Director finds that Indiana's use of the 1,000-foot criterion is reasonable. Therefore, the Director finds that the proposed 1,000-foot criterion at 310 IAC 12-3-29/67(a) is no less effective than the Federal regulations at 30 CFR 779.12(b) and 783.12(b).

Subsections (a) also provide that the description of the nature of cultural, archeological, and historic resources shall be based on information obtained from the Indiana DHPA. As discussed above in Finding 3, OSM has concluded that SHPO's are the official representatives of the historic resources in the States. As such, they can be expected to possess the relevant information concerning such resources. In Indiana, the DHPA can be expected to possess such information. Where the DHPA determines that it does not possess the relevant information, the IDNR has established procedures to follow:

(1) The DHPA will provide its findings to the Division of Reclamation, in writing; and

(2) The Division of Reclamation would then determine, based on all the available information from the permittee, the DHPA, and the Division of Reclamation's archeologist, if the permittee would be required to provide additional information.

Under Indiana's proposed system, all sources of information would be considered. Therefore, the Director finds that the proposed language which provides that such descriptions shall be based on information obtained from the DHPA is no less effective than 30 CFR 779.12.

Subsections (b) have been added to provide that the Director of IDNR shall require the permit applicant to submit additional information to describe and identify the nature of cultural, archeological, and historic resources when the Director of IDNR determines that sufficient information is not available from the DHPA to identify the nature of such resources. The proposed language also identifies commonly known information sources but does not exclude any sources of information. See Finding 3, above, for additional information concerning this process, the IDNR, and the DHPA.

The Federal regulations at 30 CFR 779.12(b) require the applicant to identify the nature of cultural, historical, and archeological resources within the proposed permit and adjacent areas, and that such description shall be based on all available information. The Director finds (also see Finding 3, above) that the

proposed language at subsections (b) will assure that all information is considered and, therefore, the proposed subsections are no less effective than 30 CFR 779/783.12(b).

Subsections (c) are added to provide that if, based upon the written comments of the DHPA and other sources, the director of IDNR determines there is a substantial likelihood that there are undiscovered archeological or historic sites that may be eligible for listing on the NRHP or the Indiana SRHSS that would be adversely affected by surface coal mining operations, the director of IDNR may require the applicant to identify and evaluate the nature of such resources through any of the following: (1) Collection of additional information; (2) conduct of field investigations; and (3) other appropriate analyses. The counterpart Federal regulations at 30 CFR 779/783.12(b)(2) provide that the regulatory authority may require the applicant to identify and evaluate important historic and archeological resources that may be eligible for listing on the NRHP, through: (1) Collection of additional information, (2) conduct of field investigations; or (3) other appropriate analyses. In the preamble to these Federal regulations, OSM stated that it is appropriate for the regulatory authority to make such decisions on a case-by-case basis. The Director finds, therefore, that the proposed Indiana language at 310 IAC 12-3-29/67(c) is substantively identical to the Federal regulations at 30 CFR 779/783.12(b)(2).

Subsections (d) are added to provide that the Director of IDNR may require an applicant to evaluate the significance of important archeological and historic sites identified under section 310 IAC 12-3-29/67 through any of the following: (1) Evaluation of records of research institutions and the DHPA; (2) evaluation of written reports; (3) field investigations; and (4) other appropriate investigations. In its submittal of this provision, Indiana asserted that subsections (d) provide for adequate evaluation of the eligibility of resources identified under section 310 IAC 12-3-29/67 to meet NRHP or Indiana SRHSS criteria. As previously discussed above, the Director finds that the proposed language is consistent with and no less effective than the Federal regulations at 30 CFR 779/783.12(b)(2) which provide that the regulatory authority may require an applicant to evaluate important historic and archeological resources that may be eligible for listing on the NRHP.

Subsections (e) as added to provide that projects to identify or evaluate cultural resources required by

subsections 310 IAC 12-3-29(b), (c), or (d) and 12-3-67(b), (c), or (d) shall be conducted in accordance with the standards established under 310 IAC 19-3. 310 IAC 19-3 provides standards for investigation that will be required whenever projects to identify or evaluate cultural or historic resources are necessary. There is not direct Federal counterpart to this section. However, the Federal rules contemplate flexibility such as this. Thus, the Director finds that the proposed rules are consistent with and no less effective than the Federal regulations at 30 CFR 779.12(b).

16. 310 IAC 12-3-38 (Surface) and 310 IAC 12-3-75 (Underground) Permit Applications; Environmental Resources; Maps

In addition to numerous nonsubstantive changes, these sections include the following substantive changes. Subsections 310 IAC 12-3-38/75(9) (A) and (B) (formerly subsections (i)) have been amended to provide that the permit application shall include maps showing any cultural, archeological, or historic resources listed, or eligible for listing, in the NRHP or the Indiana SRHSS. Prior to these amendments, the provisions did not require information concerning resources eligible for such listing. The Director finds that the amended language is substantively identical to the counterpart Federal regulations at 30 CFR 779/783.24(i).

Indiana has also amended 310 IAC 12-3-38/75(9)(C) to provide that the required maps shall also show all archeological and historic sites known by the DHPA within the permit and adjacent area. Prior to this amendment, these provisions required information concerning all known archeological sites within the permit and adjacent area.

As discussed above in Finding 3, the DHPA is the State's official clearinghouse of the historic resources in Indiana. As such, the DHPA can be expected to possess much of the relevant information concerning such resources. Also, as discussed in Finding 3 above, where the DHPA does not possess the relevant information, the IDNR has established procedures which should assure that all relevant information is obtained and considered by the IDNR. Under the proposed amendments at 310 IAC 12-3-29/67 (c) and (d), the director of IDNR may require the applicant to provide additional information from other sources if the DHPA determines that it has insufficient information. Therefore, the Director finds that the proposed

amendments are no less effective than the Federal regulations at 30 CFR 779/783.24(i).

17. 310 IAC 12-3-52 (Surface) and 310 IAC 12-3-84 (Underground) Permit Applications; Reclamation Plan; Protection of Public Parks and Historic Lands

Subsections (a) are amended to provide that for any public parks or any historic lands listed on the NRHP or the Indiana SRHSS that may be adversely affected by the proposed operations the submitted plan shall describe the measures to be used: (1) To prevent adverse impacts; or (2) If valid existing rights exist or joint agency approval is to be obtained under 310 IAC 12-2-1(3) to minimize adverse impacts.

The proposed language is nearly identical to the counterpart Federal regulations at 30 CFR 780.31(a) and 784.17(a) with one exception. Where the proposed language reads "or any historic lands" listed on the NRHP, the counterpart Federal regulations read "or any places" listed on the NRHP. That is, the proposed language reads "historic lands" where the Federal language reads "places."

Indiana defines "historic lands" at 310 IAC 12-0.5-59, and that definition is substantively identical to the Federal definition of "historic lands" at 30 CFR 762.5 (see Finding 11 above). Indiana defines "historic lands" to mean, for the purposes of 310 IAC 12, areas containing historic, cultural, or scientific resources. The phrase "historic, cultural, or scientific resources" would include structures, artifacts, and objects in addition to actual land.

The Director finds, therefore, that the proposed language at 310 IAC 12-3-52/84(a) is no less effective than the Federal regulations at 30 CFR 780.31(a) and 784.17(a).

Subsection (b) is added to provide that the Director of IDNR may impose conditions that require the applicant to protect historic or archeological properties listed on or eligible for listing on the NRHP or the Indiana SRHSS through appropriate mitigation and treatment measures consistent with the standards established under 310 IAC 19-3. Mitigation and treatment measures must be approved by the Director of IDNR after consideration of the comments of the DHPA. Subsection (b) further provides that required measures that avoid impacts must remain in place throughout all mining and reclamation operations. Required measures that involve the mitigation of impacts through excavation or documentation may be taken after

permit issuance provided that they are completed before the property is affected by any mining operation.

The Indiana rule differs from the Federal rule in several ways. Indiana provides for mitigation and treatment measures consistent with the standards established under 310 IAC 19-3. Throughout the cultural and historic resources rules, there is a constant theme of flexibility. The State regulatory authority is free to choose its method that will fulfill the minimum requirements set forth by SMCRA and its implementing regulations. The Director concludes that Indiana has adopted a reasonable approach that fulfills the minimum Federal requirements.

The Indiana rule also is different than the Federal rules in that mitigation and treatment measures must be approved by the Director after consideration of the comments of the DHPA. This difference is superficial. The Federal rules require that the SHPO be "notified of each permit application and given an opportunity to comment." 52 FR at 4249. While the DHPA is not the SHPO, it is the Indiana agency which houses the archeological, cultural and historic resources information. Thus, Indiana is explicitly stating what the Federal rule impliedly states.

The Indiana rules also require that all measures must remain in place throughout the mining and reclamation operations. Again, the Indiana rule is explicitly stating what the Federal rule implies. It would not be logical to remove protective measures until mining was completed. Otherwise, such protection may be ineffective since damage could occur at any point in the mining operation.

Finally, Indiana requires that excavation or documentation must be completed before the property is affected by any mining operation. The Federal rule is more general in its language. It states that appropriate mitigation and treatment measures must be completed before the property is affected. OSM has determined that Indiana's measures are appropriate and will protect the properties. Therefore, the Director finds the proposed language is no less effective than the Federal regulations at 30 CFR 780.31(b) and 784.17(b).

18. 310 IAC 12-3-112 Permit Approval or Denial

In addition to several nonsubstantive changes, Indiana proposes to add new subsection (p) concerning a required written finding for permit approval. Under subsection (p) the Director of the IDNR must make a written finding that

the effect of the proposed mining operation on properties or sites eligible for listing on the NRHP or the Indiana SRHSS has been taken into account. Indiana also provides that this finding may be supported in part by inclusion of appropriate permit conditions or changes in the operation plan to protect these properties or sites, or by a documented decision that no additional protection measures are necessary. The proposed language is substantively identical to the counterpart Federal regulations at 30 CFR 773.15(b)(1) except that where the Federal regulation provides for properties "listed on and eligible for listing on" the NRHP, Indiana provides for properties "eligible for listing on" the NRHP or Indiana SRHSS. However, the governing Indiana statute at IC 13-4.1-4-3.1(a) provides that the Director of the IDNR may not approve a permit application unless the Director of the IDNR states in writing that the Director has considered the effects of the proposed mining operation or any place "listed on or eligible for listing on" the NRHP or the Indiana SRHSS. Therefore, the Director finds that the proposed rule language in concert with the governing statute is no less effective than the Federal regulations.

Indiana also proposes to add to subsection (p) that the Director of the IDNR in making the finding required by subsection (p) must take into account: (1) The relative importance of the property or site to other properties or sites based upon information available from the DHPA; and (2) the estimated cost of any treatment or mitigation measures required by the Director of the IDNR. The estimate shall be provided by the applicant and shall be prepared by a person qualified as a principal investigator at 310 IAC 19-3-4. The estimate shall be accompanied by the scope of work and any other documents that provide the basis for the estimate. Indiana further provides that a decision that treatment or mitigation measures are not required shall not be based on cost alone. As discussed above at Finding 6, above, concerning the proposed statutes which govern these rules, Indiana's approach of balancing the relative importance of a site to other sites and the cost of an investigation is that type of flexible approach contemplated by OSM. The Director finds, therefore, that the proposed rules are not inconsistent with SMCRA and no less effective than the Federal regulations.

19. 310 IAC 12-3-121

Permit Revisions

In addition to numerous nonsubstantive changes throughout this section, Indiana proposes to add new subsection (d)(7).

Proposed subsection (d)(7) provides that the Director of IDNR may require an applicant for an incidental boundary revision to protect, within the expanded boundaries, any historic or archeological properties listed or eligible for listing on the NRHP or the Indiana SRHSS to prevent or minimize adverse impacts through appropriate mitigation and treatment measures. In the meeting held on September 17, 1992 (Administrative Record Number IND-1155), Indiana clarified that the IDNR can require the identification of properties listed or eligible for listing on the NRHP or the Indiana SRHSS within the expanded boundaries of an incidental boundary revision under 310 IAC 12-3-121(d)(4) (B) and (C). There is no direct Federal counterpart to the proposed language. Neither section 511(a) of SMCRA nor 30 CFR 774.13(d) define incidental boundary revision. However, the Director finds that the proposed language is not inconsistent with SMCRA or the Federal regulations.

IV. Summary and Disposition of Comments

Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), comments were solicited from various interested Federal agencies.

1. *Rules proposed under amendment #91-8.* The U.S. Environmental Protection Agency (EPA) responded and concurred without comment. The U.S. Fish and Wildlife Service and the Bureau of Mines also responded and had no comments. The Advisory Council on Historic Preservation (ACHP) expressed objections to 310 IAC 12-3-29 and 12-3-38 which leave decisions about the need for identification and evaluation of archeological properties to the discretion of the Director of IDNR. This, ACHP asserts, places the burden of identification on the State Historic Preservation Officer (SHPO). It is appropriate and consistent with the Federal regulations that the decisionmaking is discretionary. The Federal historic rules are "designed to allow regulatory authorities maximum flexibility in adopting procedures which are suitable for conditions existing in the individual States. The rules emphasize reasonable decisionmaking about historic resources without

specifying all the means by which State regulatory authorities choose to achieve the specified results" (52 FR 4244, 4246; Feb. 10, 1987). "[T]his will require regulatory authorities to use judgment in determining what is an appropriate action in a specific case, this approach will allow each regulatory authority to develop procedures best suited to the individual circumstances of its State" (52 FR at 4249). In addition, the Director notes that in Indiana, the Director of IDNR is the SHPO, but it is the DHPA which houses the archeological, cultural and historic resources information. The DHPA is responsible for providing written recommendations to the SHPO concerning archeological, cultural, and historical resources. Rather than being a burden, it is a primary function of the DHPA.

The ACHP commented that none of the regulations set forth by Indiana require other than "consideration" of any comments from the DHPA. That is, there are no provisions for formal consultation with the DHPA to ensure that historic properties are fully considered in the permitting process. A similar comment was raised in the Federal rules. Commenters wanted OSM to include a formal role by the SHPO in the permitting process. OSM responded by stating the role of the SHPO is important but that the SHPO and state regulatory authority are both State agencies and "it is appropriate to leave the details of the consultation processes between them to the individual States" (52 FR at 4249). Thus, the SHPO is only an advisor and not the ultimate decisionmaker (51 at 3805). The ultimate decisionmaker is the State regulatory authority. The Director notes that the proposed rules allow sufficient opportunity for DHPA comment during the permit review process (see Finding 3, above), and that the DHPA can interpose objections to all permit decisions.

ACHP also commented that as for religious or cultural properties significant to Native Americans, not all may be "historic," and thus subject to the proposed Indiana regulations as "historic lands." However, ACHP notes the provisions of the American Indian Religious Freedom Act (Pub. L. 95-341) may apply in some situations.

2. *Statutes proposed.* The EPA concurred without comment, the U.S. Soil Conservation Service and the U.S. Fish and Wildlife Service responded with no comments.

The ACHP expressed concern over Indiana's choice of the word "known" at proposed IC 13-4.1-3-3(a)(13). The ACHP argues that the showing of known sites on maps is "of very little assistance

in making decisions about the impact of surface mining operations on archaeological and historic properties. The vast majority * * * have not been discovered." SMCRA at 507(b)(13) requires the permit applicant to show on a map all "significant known archeological sites existing on the date of application." (Emphasis added.) The regulations at both the Federal and State level are what define and clarify what is meant by their statutes (see 30 CFR 779.12(b) and 310 IAC 12-3-29).

The National Park Service (NPS) commented on IC 13-4.1-1-3 and asserted that the definition of "substantial legal and financial commitments in a surface coal mining operation" is too broad and conflicts with the Federal definition.

According to the NPS, the definition is too broad because Indiana extends the definition to "capital-intensive activities beyond those significant investments related to long-term coal contracts as specified in 30 CFR 762.5." The Director disagrees. As noted in Finding 1(b), above, Indiana has two examples of "capital-intensive activities" that are not listed in the Federal definition. These examples are consistent with Congressional intent. In the preamble to the Federal rule, the Director quoted language from a Senate Report that said: "[i]n order to preclude designation [as unsuitable for mining], it must be established that specific plans and specific contracts for sale of coal and purchase of necessary equipment * * * were in existence on the date of enactment." (Emphasis added) 48 FR 41312, 41327 (September 14, 1983). The Indiana acquisition of capital equipment example, which OSM previously approved in Kentucky, is just that type of necessary equipment purchase that Congress was contemplating. The other example, that of improvement or modification of coal lands, is also a significant investment that is not solely based on the cost of acquiring the coal in place or the right to mine such coal.

Two commenters addressed the term "nature" at IC 13-4.1-3-3.1(a). The ACHP commented that the term "nature of" is misleading since section 106 of the National Historic Preservation Act requires that only "significant" properties that are on or eligible for the NRHP be considered. The Council for the Conservation of Indiana Archaeology, Inc. (CCIA) noted that the term "nature" is not defined and is inappropriate. In response, the Director notes that the term "nature" is used in the Federal regulations at 30 CFR 779.12 concerning permit applications. Also, under the proposed Indiana provision, all cultural and historic sites will be

identified including significant properties on or eligible for listing on the NRHP.

The NPS commented that IC 13-4.1-4-3(a) does not state how the chief of IDNR will consider the effects of the proposed mining operation on historic properties. In response, the Director notes that under the process to be instituted by Indiana under the proposed provisions the Indiana DHPA will provide a written evaluation of the identity and nature of cultural and historic resources. If additional information is needed, the DHPA will so state in writing to the Chief, Division of Reclamation and to the permittee. The Chief, Division of Reclamation will make a final decision, with reliance on the information provided by the DHPA, on a case-by-case basis.

The NPS commented on IC 13-4.1-4-3.1. NPS commented that IC 13-4.1-4-3.1(b) implies that compliance with Federal historic preservation law is optional. The Director disagrees. The proposed language authorizes the imposition of permit conditions to prevent or mitigate adverse effects on places listed or eligible for listing on the NRHP or the Indiana SHRSS. In the proposed rules at 310 IAC 12-3-52(a), Indiana requires that proposed reclamation and operation plans include a description of the measures to be used to prevent or minimize adverse impacts of any historic lands listed on the NRHP or the Indiana SHRSS that may be adversely affected by the proposed operations.

NPS commented that under IC 13-4.1-4-3.1(c)(2) which authorizes the use of amateurs in any field investigation, studies, or records researcher, although it is legitimate to include both amateurs and professionals, such participation should be guided by 36 CFR 61.4 as a means of establishing minimum qualification standards for cultural resource professionals. This issue was raised in a Kentucky amendment and OSM rejected requiring such standards. See 54 FR 51391, 51393 (December 15, 1989). A similar issue was also raised when the Federal rules were proposed. In the Federal rule, a commenter wanted State regulatory authorities to hire qualified professional personnel to conduct any historic resources activities (52 FR 4244, 4251; February 10, 1987). OSM did not agree that such activity needed to be carried out by professionals. "The regulatory authorities are responsible for making reasonable decisions about historic resources and for ensuring that they have been considered in the permitting process. Issuance of a permit requires a finding that they have fulfilled this

responsibility" (52 FR at 4251) (emphasis added). This flexibility in the Federal rules is a constant theme throughout the cultural and historic resources rules. "The rules emphasize reasonable decisionmaking about historic resources without specifying all the means by which State regulatory authorities choose to achieve the specified results" (52 FR 4246). Thus, if Indiana does not want to adopt the standards of 36 CFR 61.4, the State is free to do so as long as there is reasonable decisionmaking that fulfills the minimum requirements set forth by SMCRA and its implementing regulations. The Director concludes that Indiana has adopted a reasonable approach that fulfills the minimum Federal requirements.

ACHP commented that in IC 13-4.1-4-3.1(c)(3) the term "substantial likelihood" is undefined and open to varying interpretations. The Director notes that as discussed in Finding 6, OSM has stated (56 FR 4257; February 10, 1987) that in general, the regulatory authority should strive to limit survey requirements to situations in which there is a substantial likelihood of important resources being found. It is appropriate for the regulatory authority to make such decisions on a case-by-case basis. In addition, the proposed implementing rules at 310 IAC 12-3-29(c) provide that such decisions be based on written comments of the Indiana DHPA. Therefore, Indiana's interpretation of "substantial likelihood" should be consistent with the standards commonly applied in the archeological and historic preservation communities.

The NPS commented that IC 13-4.1-4-3.1(c)(3) should be rewritten to provide that field studies are required where a likelihood exists that archeological or historic sites are present. The Director disagrees. As written, the provision merely strives to limit studies where there is not substantial likelihood that such sites exist. As discussed in Finding 6, above, in the preamble to the counterpart Federal regulations at 30 CFR 779.12(b)(2) and 783.12(b)(2), OSM stated that in general, the regulatory authority should strive to limit survey requirements to situations in which there is a substantial likelihood of important resources being found.

NPS commented that IC 13-4.1-4-3.1(c)(4)(B) should be amended to define factors other than cost, which should also be considered when deciding whether to proceed with field investigations. As discussed in Finding 6, above, there is no direct Federal counterpart to this proposed provision.

However, the Director noted that OSM encourages regulatory authorities to make decisions concerning historic resources which balance the interest of the public in such resources against the need to mine coal. Cost is but one factor a regulatory authority would consider. Although each relevant factor is not proposed for inclusion in the Indiana provisions, such factors will be considered as a consequence of Indiana's proposed provisions which provide for the participation of professional and amateur archeologists, anthropologists, historians or related experts as well as the DHPA.

The U.S. Forest Service (USFS) commented that it is inappropriate at IC 13-4.1-4-3.1(a) to lump language concerning sites "listed on" and "eligible for" listing on the NRHP into one category. The Director notes that IC 13-4.1-14-1(a)(3) and the proposed implementing rules at 310 IAC 12-3-52/84(a) clearly separate the rules for "listed" and "eligible for" sites, and provide clear intent to prevent adverse impacts to NRHP listed sites as do the Federal regulations at 30 CFR 780.31 and 784.17.

The USFS commented that IC 13-4.1-4-3.1(c)(2) which provides for participation by amateurs in archeological investigations seems unnecessarily burdensome for coal companies. In response, the Director notes that the provision merely requires that implementing rules cannot restrict amateurs from participating in any needed archeological investigations.

The USFS commented that in IC 13-4.1-4-3.1(c)(2) the words "substantial likelihood" implies a predictable level of success which is not yet attainable in the Midwest. In response, and as noted above in Finding 6, the regulatory authority should strive to limit survey requirements to situations in which there is a substantial likelihood of important resources being found. To help accomplish this, the regulatory authority should make such decisions on a case-by-case basis.

The USFS commented that at IC 13-4.1-4-3.1(c)(4)(A), the required comparison of the relative importance of a site eligible for listing on the NRHP would be lengthy if indeed they could be made at all. In response, the Director notes that Indiana's requirement that such a comparison be made is not inconsistent with SMCRA and the Federal regulations and that the exact method for implementation is left to the States to decide.

The ACHP commented that proposed IC 13-4.1-4-3.1(c)(5) should be clarified by providing that under this provision, artifacts can be retained by an

appropriate laboratory long enough to complete analysis and reporting, before being returned to their owners. In response, the Director notes that although the provision does not contain such language, the proposed language does not prohibit artifacts being retained for study before being returned to their owners.

The ACHP commented that at IC 13-4.1-14-1, all exclusions based on "valid existing rights" should be deleted. As discussed in Finding 8, above, the proposed language is substantively identical to the Federal regulations at 30 CFR 780.31(a)(2).

Public Comments

The public comment periods and opportunities to request a public hearing were announced as follows: (1) For the proposed statutes in SEA 121, which are provided in Public Law 108-1988, in the May 10, 1988, *Federal Register* (53 FR 16560); (2) For the proposed statutes in amendment 91-1, which are provided in Public Law 104-1990, in the March 21, 1991, *Federal Register* (56 FR 11980); (3) For the proposed rules in amendment 91-8, in the August 9, 1991, *Federal Register* (56 FR 37868), in the August 19, 1991, *Federal Register* (57 FR 37498); and (4) For the proposed rules in amendment 91-7C in the July 9, 1992, *Federal Register* (56 FR 31093). The public comment periods ended on June 9, 1988, April 22, 1991, September 9, 1991, September 3, 1992, and August 8, 1991, respectively. A public hearing was held on June 6, 1988 (Administrative Record Number IND-0579), concerning the proposed statutes in SEA 121. No other public hearing was requested so none was held.

Several commenters believed that proposed IC 13-4.1-3-3 is inconsistent with 36 CFR 800.4 and OSM's regulations because it restricts information to that known by the DHPA, while the Federal regulations require information from all available sources. The purpose of the Federal rules on historic resources was:

[T]o ensure that as part of those [state] programs regulatory authorities have regulations and procedures which enable them to make reasonable and informed decisions about the disposition of important historic resources. The rules are designed to allow regulatory authorities maximum flexibility in adopting procedures which are suitable for conditions existing in the individual States. The rules emphasize reasonable decisionmaking about historic resources without specifying all the means by which State regulatory authorities choose to achieve the specified results. (Emphasis added) 52 FR 4244, 4246; (February 10, 1987).

As discussed in Finding 3, above, the Indiana amendment is no less effective than the Federal regulation. An analogous condition exists at 30 CFR 779.12(b). The Federal regulation at 30 CFR 779.12(b) requires the applicant to describe and identify all cultural, historic and archeological resources listed or eligible for listing on the National Register of Historic Places and known archeological sites. The description is to be based on all available information. Typically, the SHPO "searches" all available sources and not the applicant (51 FR 3802, 3805; January 30, 1986). SHPO's "are the official representatives of historic resources in the States. As such, they can be expected to possess the relevant data concerning such resources. Regulatory authorities can make other provisions in their own programs in those States where this is not the case" (52 FR 4244, 4258-59; February 10, 1987). Indiana has decided to make the DHPA the only source. It is the only source in the sense that the applicant need only go to the DHPA. In reality, the DHPA is collective of all available sources. This choice is what was contemplated by OSM in allowing the State regulatory authorities the flexibility of choosing the means that will achieve the desired result of a well-informed decisionmaker.

Several commenters also contended that the DHPA does not have complete site records. As noted in Finding 3, above, if the DHPA does not have adequate information, it will report such to the Division of Reclamation of the IDNR. The Chief, Division of Reclamation then will decide if it needs additional information. This is not a departure from the Federal regulations (see 30 CFR 779.12(b)(2)). The SHPO or in this case the DHPA is an advisor and not the ultimate decisionmaker (51 FR at 3805). The ultimate decisionmaker is the State regulatory authority. If it determines additional information is needed it will require the applicant to submit additional information through field investigations and the like (also see Finding 15 above).

The Council for the Conservation of Indiana Archeology, Inc. (CCIA) commented that the amended law in IC 13-4.1-3-3.1(a) and IC 13-4.1-4-3.1(b), by using phrases as "may require" and "may impose" allow too great discretion in decisions that are critical to the identification, evaluation, and treatment of archeological resources. In response, the Director notes that Federal regulations at 30 CFR 779.12(b)(2) and 783.12(b)(2) also use such phrases as "may require" in the regulations concerning the identification and

protection of such resources. As contemplated by the Federal rules, this discretion allows the regulatory authority to require additional information or to require the protection of resources if the evidence indicates that such additional information or protection is warranted. The language does not authorize the regulatory authority to disregard the facts and to not require additional information or to not protect when the evidence indicates that such additional information or protection is warranted.

The CCIA commented that under IC 13-4.1-3-3.1(b) it will be difficult to conduct additional investigations or that such investigations will be done in an acceptable manner. In response, the Director notes that in Findings 3 and 15 above, the proposed statutes and rules incorporate a clear process which Indiana will use to meet its obligations concerning the identification and protection of cultural and historic resources. Included within that process is a clear path from the permittee through the DHPA and to the Chief, Division of Reclamation of the IDNR through which decisions can be made concerning cultural and historic resources, including the decision that additional information is needed. The quality of additional investigations can be monitored by the DHPA through review of data and for field investigations is maintained by standards established at 310 IAC 19 concerning archeological investigations.

The CCIA commented that IC 13-4.1-3-3.1(b) uses the undefined phrase "important" and that this term could preclude the identification of unknown archeological sites or evaluation of poorly known sites. CCIA also questioned who will determine what important means. In response, the Director notes that the Federal rule at 30 CFR 779.12(b)(2) also uses the term, "important." The rules implementing this statutory section require that if the director determines that there is a substantial likelihood that there are undiscovered archeological or historic sites that may be eligible for listing on the NRHP or the State Register, then the director may require the applicant to identify and evaluate such resources. See 310 IAC 12-3-29(c). Thus, unknown or poorly known sites will not go unnoticed.

The CCIA stated that SEA 121 severely limits the regulatory authority to require additional information through the imposition of the principles at IC 13-4.1-4-3.1(c). Specifically, the CCIA commented that IC 13-4.1-4-3.1(c)(1) contains circuitous language and should more directly encourage the

use of a broad range of information and that the Indiana program does not have an affirmative provision that the sources listed in the Federal regulations shall be consulted for information. In response, the Director notes this language is enabling in nature, and the regulations, especially 310 IAC 12-3-29, assist in implementing such language.

The CCIA commented that IC 13-4.1-4-3.1(c)(3) uses undefined phrases such as "substantial likelihood," "important" and "significant." The Director notes that the term "important" is also not defined in the Federal regulations. The terms cannot be defined because the Federal regulations contemplate flexibility by the states. The States must make such decisions on a case-by-case basis (52 FR 4258).

The CCIA commented on IC 13-4.1-4-3.1(c)(4)(A), which concerns the relative importance of property or sites listed on or eligible to be listed on the NRHP. The CCIA stated that the proposed language is ambiguous because the NRC must judge the "relative importance" of a site in making decisions. Again, the Federal historic rules contemplate flexibility by the states in achieving the minimum Federal standards. To define the term "relative importance" would not advance any goal because such importance must be decided on a case-by-case basis since resources may be unique in nature. The Director notes that the purpose of the proposed language is to require that the NRC, in drafting rules to implement IC 13-4.1-4-3.1, draft such rules to be consistent with the guidelines at IC 13-4.1-4-3.1(c).

The CCIA commented that IC 13-4.1-4-3.1(c)(4)(B), has two faults: (1) The proposed language allows costs to be estimated by the applicant, and (2) The use of "may not," does not mean the same as "shall not." In response, the Director notes that although the cost of an investigation must be estimated by the applicant, a significant portion of such an estimate would, logically, consist of fee-services information provided to the applicant by professionally qualified and experienced sources. In addition, the DHPA is the agency charged with deciding whether or not estimates provided by an applicant are reasonable. The DHPA, with its duty to the public, could not blindly accept an estimate without first determining if the estimate was reasonable. Regarding the use of the term "may not," the Director notes that there is no direct Federal counterpart to the proposed provision. However, as noted in Finding 6, above, the proposed

language is not inconsistent with SMCRA and the Federal regulations.

The CCIA commented that the proposed statutes don't provide a logical process in protecting and preserving archaeological resources. In response, the Director notes that part of the confusion expressed by CCIA may be resolved by the knowledge that under Indiana's recently passed "sunset law" (Pub. L. 28-1990), the director of IDNR is responsible for approving permits and the NRC adopts the rules. The NRC writes the Indian a SMCRA-implementing rules and the director of IDNR and the DHPA function in accordance with those rules using the process outlined in Finding 3 above.

The Indiana Coal Council, Inc. (ICC) submitted comments and stated that it fully supports Public Law 108-1988 and Public Law 104-1990 and urged OSM to approve them as an amendment to the Indiana program. ICC did not provide comments concerning the rules submitted under amendment 91-8. ICC stated in its letter dated September 6, 1991 (Administrative Record Number IND-0943), that it is inappropriate to submit comments since the proposed rules had not been officially adopted by the State. In response, the Director notes that Indiana submitted the proposed rules as a formal amendment and following established procedures OSM announced the submittal in the Federal Register (56 FR 37868), and requested public comment. In its submittal of the proposed rules, Indiana stated that if in its final rule promulgation process any changes are made to the rules, Indiana would forward the changes to OSM for review and approval. Any such submittals to OSM would be announced in the Federal Register and a comment period would be opened to allow public comment on those changes.

The National Coal Association (NCA) noted that definition of "substantial legal and financial commitments in a surface coal mining operation" at IC 13-4.1-1-3 closely resembles the Federal definition except for the example of an existing but non-producing coal mine. However, the Federal definition also excludes this example. OSM deleted such an example after the court remanded the definition (see 53 FR 26582; July 13, 1988).

V. Director's Decision

Based on the above findings, the Director is approving proposed amendments submitted by Indiana on March 18, 1988, February 15, 1991, by undated letter which was received by OSM on July 10, 1991, by letter dated June 15, 1992, and transferred from amendment 91-7C and as clarified by

Indiana in a meeting with OSM dated September 17, 1992. The Federal regulations at 30 CFR part 914 codifying decisions concerning the Indiana program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage the states to conform their programs with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required. However, EPA responded to the Director's request for comments and stated that EPA had no comments and that it concurred on the proposed amendments (Administrative Record No. IND-0858 and IND-1034).

VI. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11,

732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal Regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 12, 1992.

Ronald C. Recker,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 914.15 is amended by adding a new paragraph (pp) to read as follows:

§ 914.15 Approval of regulatory program amendments.

(pp) The following amendments (amendments submitted under Senate Enrolled Act (SEA) 121, Program Amendment Number 91-1 and 91-8, and two proposed amendments transferred from proposed amendment #91-7, (SEA 154) to the Indiana program as submitted to OSM on March 18, 1988, February 15, 1991, and by undated letter received by OSM on July 10, 1991, and amended by letter dated June 15, 1992, respectively and transferred on June 23, 1992 (57 FR 27928), and as clarified by Indiana in a meeting with OSM dated September 17, 1992, are approved, effective December 30, 1992.

Changes to IC 13-4.1-1-3 concerning the definitions of "higher or better uses" and "substantial legal and financial commitments in a surface coal mining operation;" IC 13-4.1-2-4 concerning petition procedures to promulgate, amend, or repeal rules; IC 13-4.1-3-3 concerning map requirements in permit applications; IC 13-4.1-3-3.1 concerning additional permit information for archeological and historical sites; IC 13-4.1-4-2 concerning additional information required to request an informal conference or public hearing; IC 13-4.1-4-3.1 concerning listing on NRHP or Indiana SRHSS; IC 13-4.1-4-5 concerning request for a hearing concerning approval or disapproval of a permit; IC 13-4.1-14-1 concerning lands unsuitable; SEA 121, section 8 concerning the enforcement of sections IC 13-4.1-3-3.1 and IC 13-4.1-4-3.1; 310 IAC 12-0-5-48 concerning the definition of "Fragile lands;" 310 IAC 12 0.5-59 concerning the definition of "Historic lands;" 310 IAC 12-2-1 concerning areas where mining is prohibited or limited; 310 IAC 12-2-2 concerning areas unsuitable; 310 IAC 12-3-13 concerning exploration of more than 250 tons; 310 IAC 12-3-29 and 12-3-67 concerning cultural and historic resources; 310 IAC 12-3-38 and 12-3-75 concerning map information for permit applications; 310 IAC 12-3-52 and 12-3-84 concerning protection of public parks and historic lands; 310 IAC 12-3-112 concerning permit approval

or denial and 310 IAC 12-3-121 concerning permit revisions.

[FR Doc. 92-31372 Filed 12-29-92; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 920

Maryland Regulatory Program; Excess Spoil

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval of a proposed amendment to the Maryland regulatory program (hereinafter referred to as the Maryland program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment provides the statutory authority to allow excess spoil from active mining operations to be placed on abandoned mine land sites to aid reclamation.

EFFECTIVE DATE: December 30, 1992.

FOR FURTHER INFORMATION CONTACT: Robert Biggi, Director, Harrisburg Field Office, Harrisburg Transportation Center, 4th and Market Streets, suite 3C, Harrisburg, PA 17101; Telephone: (717) 782-4036.

SUPPLEMENTARY INFORMATION:

- I. Background on the Maryland Program.
- II. Submission of Amendment.
- III. Director's Findings.
- IV. Summary and Disposition of Comments.
- V. Director's Decision.
- VI. Procedural Determinations.

I. Background on the Maryland Program

On February 18, 1982, the Secretary of the Interior approved the Maryland program. Information regarding the general background on the Maryland program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, *Federal Register* (47 FR 7214). Actions taken subsequent to the approval of the Maryland program are identified at 30 CFR 920.12, 30 CFR 920.15, and 30 CFR 920.16.

II. Submission of Amendments

By letter dated June 23, 1992, the Maryland Bureau of Mines (Maryland) submitted a program amendment to OSM (Administrative Record No. MD-555.00). The proposed amendment, House Bill Number 1234, revises section 7-508 of the Natural Resources Article of the Annotated Code of Maryland (the

Code) by allowing excess spoil from permitted areas to be placed on abandoned mine land sites.

OSM announced receipt of the proposed amendment in the August 18, 1992, *Federal Register* (57 FR 37133) and in the same notice opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on September 17, 1992.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17, are the Director's findings concerning the proposed amendment submitted on June 23, 1992. Any revisions not specifically addressed below are found to be no less stringent than SMCRA and no less effective than the Federal rules.

Maryland is proposing to add to its Code section 7-508(b)(2) which is stated as follows:

All spoil from a permitted area shall be reclaimed within that permitted area or placed on abandoned mine land in a manner approved by the Department. Spoil from a permitted area may not be placed on abandoned mine land if it is needed to achieve the approximate original contour within that permitted area or to meet other permit requirements.

There is no counterpart to the proposed statutory change in either SMCRA or the Federal rules. However, in a letter dated July 9, 1991 (Administrative Record NO. MD-555.09), the Director of OSM provided Maryland with clarification concerning OSM's position on the reclamation of abandoned mine lands by a mine operator in conjunction with surface coal mining and reclamation operations. Specifically, the Director's purpose was to provide guidelines to states that were interested in reclaiming abandoned mine lands using excess spoil from adjacent areas where mining is conducted under permits issued pursuant to title V of SMCRA or its state equivalent. The Director cited approval of a similar provision in West Virginia where OSM determined that a contract for reclamation approved under title IV of SMCRA (or under an equivalent state abandoned mine lands (AML) program) is equivalent to a permit and bond and is thus consistent with the excess spoil disposal requirements of section 515 of SMCRA. Therefore, the placement of excess spoil on an abandoned site which is receiving Federal AML funds is not inconsistent with section 515(b)(22) of SMCRA (55 FR 21329, May 23, 1990). The Director further explained in his July 9, 1991, letter that

State programs which issue such contracts under a non-Federally funded program must provide a degree of security comparable to that afforded by a Federally funded AML reclamation project. Before issuing such contracts, States must first submit and receive OSM approval of the State policies and procedures applicable to such non-Federally funded contracts.

OSM reviewed the proposed amended and determined that it lacks specificity. By letter dated September 2, 1992, OSM requested that Maryland clarify the meaning and terms for implementation of the amendment with regard to: (1) Site eligibility requirements, (2) State/permittee contracts, (3) applicable reclamation standards, (4) spoil disposal restrictions, and (5) environmental review (Administrative Record No. 555.05). Maryland has agreed to respond to OSM's request but has not yet done so.

While there is no direct Federal counterpart to this provision, the Director finds that it is not inconsistent with SMCRA and the Federal regulations. However, before the provision can be implemented, Maryland must obtain approval from the Director of implementing rules or policy/procedural documents which address the items listed in the Director's September 2, 1992, letter requesting clarification.

IV. Summary and Disposition of Comments

Public Comments

The public comment period announced in the August 18, 1992, *Federal Register* (57 FR 37133) ended on September 17, 1992. No public comments were received and a public hearing was not held as no one requested an opportunity to provide testimony.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Maryland program. The Department of the Interior, Bureau of Mines, The Department of Labor, Mine Safety and Health Administration, and the Department of the Army, Corps of Engineers, all concurred without comment.

V. Director's Decision

Based on the above finding, the Director is approving the program amendment submitted by Maryland on June 23, 1992. The Director has

determined that proposed section 7-508(b)(2) of the Maryland Annotated Code is not inconsistent with SMCRA and the Federal regulations. However, the Director finds that it is necessary to require Maryland to promulgate implementing regulations and develop policy/procedural documents prior to authorizing the placement of excess spoil from active mining operations on abandoned mine land. These regulations and documents must be part of the approved Maryland State program.

The Federal regulations at 30 CFR part 920 codifying decisions concerning the Maryland program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). In a September 22, 1992, letter the Environmental Protection Agency concurred with the approval of the proposed amendment and noted that any placement of spoil must comply with Clean Water Act requirements and with 40 CFR 122.26, storm water regulations (Administrative Record No. MD-555.08).

VI. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments

since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not place any new burden on the coal industry but will allow operators greater flexibility and improved operational efficiency.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 3, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 920—MARYLAND

1. The authority citation for part 920 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. In § 920.15, a new paragraph (t) is added to read as follows:

§ 920.15 Approval of amendments to State regulatory programs.

(t) The following amendment submitted to OSM on June 23, 1992, is approved effective December 30, 1992. The amendment revises section 7-508(b)(2) of title 7 of the Maryland Annotated Code which pertains to the placement of excess spoil from a permitted area on abandoned mine land. However, the Director is requiring at 30 CFR 920.16(o), that implementing regulations and policy/procedural documents be submitted to and approved by the Director before the amendment to section 7-508(b)(2) may be implemented.

3. Section 920.16 is amended by adding a new paragraph (o) to read as follows:

§ 920.16 Required program amendments.

(o) Prior to authorizing the placement of any excess spoil from a permitted area on abandoned mine land, Maryland shall obtain approval from the Office of Surface Mining Reclamation and Enforcement of implementing regulations and policy/procedural documents pertaining to section 7-508(b)(2) of title 7 of the Maryland Annotated Code.

[FR Doc. 92-31374 Filed 12-29-92; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 938

Pennsylvania Regulatory Program; Regulatory Reform

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule.

SUMMARY: OSM is announcing the approval, with certain exceptions, of a proposed amendment to the Pennsylvania permanent regulatory program (hereinafter referred to as the Pennsylvania program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment defines the term "owned or controlled" or "owns or controls;" details requirements concerning the reporting of violations, ownership and control data, and the effect of that information on various permitting decisions; and provides criteria and procedures for the identification and rescission of impropiously issued permits. The amendment is in response to a Part 732 Notification dated May 11, 1989 (Administrative Record No. PA-773),

and is intended to revise the State program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: December 30, 1992.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, Office of Surface Mining Reclamation and Enforcement, Harrisburg Transportation Center, Third Floor, suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101 Telephone: (717) 782-4036.

SUPPLEMENTARY INFORMATION:

- I. Background on the Pennsylvania Program.
- II. Submission of Amendment.
- III. Director's Findings.
- IV. Summary and Disposition of Comments.
- V. Director's Decision.
- VI. Procedural Determinations.

I. Background on the Pennsylvania Program

The Secretary of the Interior conditionally approved the Pennsylvania program on July 31, 1982. Information on the background of the Pennsylvania program including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982, *Federal Register* (47 FR 33050). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Submission of Amendment

By letter dated December 18, 1991 (Administrative Record Number PA 803.00), Pennsylvania submitted a State program amendment to address four outstanding Part 732 Notifications, listed below:

1. *Historic Properties*, June 9, 1987, Administrative Record Number PA 651.
2. *Regulatory Reform Review II*, December 16, 1988, Administrative Record Number PA 723.
3. *Ownership and Control*, May 11, 1989, Administrative Record Number PA 773.
4. *Regulatory Reform Review III*, January 2, 1990, Administrative Record Number PA 787.03.

Other revisions are contained in the proposed amendment package to address provisions necessary for Pennsylvania to implement amendments to the Pennsylvania Surface Mining Conservation and Reclamation Act (Pub. L. No. 1570, Act 171 of December 12, 1986) and changes to clarify existing regulations.

OSM announced receipt of the proposed amendment in the April 13, 1992, *Federal Register* (57 FR 12785), and, in the same notice, opened the

public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on May 13, 1992. At the request of the Pennsylvania Coal Association, a public meeting was held on June 30, 1992.

To facilitate the processing of the ownership and control provisions contained in this amendment package, OSM has decided to process the proposed changes resulting from the Ownership and Control Part 732 Notification (Administrative Record No. PA-773.00) separately. Therefore, this final rule will discuss only those changes pertaining to ownership and control rules. The remainder of the revisions from the State's amendment package will be processed following the publication of this final rule.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17, are the Director's findings concerning the proposed amendment to the Pennsylvania program. Nonsubstantive changes, which are proposed throughout these rules, to make grammatical corrections and to correct subsection letter notations are not specifically discussed.

1. Section 86.1 Definitions

a. *Entity*: Pennsylvania proposes to add language to define the word "entity," to mean "all persons, including but not limited to corporations, associations, general and limited partnerships, agencies and instrumentalities of Federal or State government, contractors, operators, permit holders, and any other forms of business organization." The definition clarifies that the term, as it is used throughout Pennsylvania's rules, includes not only business organizations, but also persons such as contractors, operators, and permit applicants. Although the Federal regulations do not contain a definition of the term "entity," Pennsylvania's use of the term, as defined, is not inconsistent with the Federal regulations concerning ownership and control. Therefore, the Director finds the definition of "entity" and its use in the Pennsylvania ownership and control rules do not render the State rules less effective than the Federal regulations pertaining to ownership and control.

b. *Ownership and Control*. Pennsylvania proposes to add definitions in sections 86.1 and 87.11 of "owned or controlled" or "owns or controls" as these concepts are used in the permit approval process. Pennsylvania's proposed revisions are

substantively identical to the corresponding Federal definition at 30 CFR 773.5, except that Pennsylvania adds the term "contractor" in the statement "Being the operator or contractor of a coal mining activity," in paragraph (iii)(B). Although the Federal definition does not include nor define the term "contractor," its use is consistent with the intent of the Federal rules in cases where the contractor is in a position to exercise control over the mining operation. Since the proposed definition adds "contractor" to the subset of relationships presumed to constitute ownership and control unless the person can demonstrate that he or she has no authority, directly or indirectly, to determine the manner in which the surface mining operation is conducted, the Director finds that its inclusion will not render the proposed State rule less effective than the counterpart Federal regulations. Therefore, the Director also finds that the State's proposed definition of, "owned or controlled" or "owns or controls" is no less effective than the Federal regulations at 30 CFR 773.5.

c. *Related Party*: Pennsylvania proposed to move existing language from section 86.37(a)(8), which defines the use of the term "related party," to the definitions under section 86.1. Although the Federal regulations do not contain a counterpart definition of the term "related party," the use of the term within the approved program is not changed, except that the definition now also includes directors and shareholders. Since the revision does not substantively alter Pennsylvania's approved program and, in fact, includes entities in addition to those in the Federal rule, the Director finds that it does not render the approved program less effective than the Federal regulations.

2. Section 86.36(c) Review of Permit Applications

Pennsylvania proposes to revise the requirements of section 86.36(c), concerning the regulatory authority's responsibility to verify that a coal mining activity owned or controlled by the applicant is not currently in violation, to include all persons linked to the applicant by the definition of "owned or controlled" or "owns or controls." The addition of the ownership and control link is substantively identical to the Federal counterpart regulations at 30 CFR 773.15(b)(1). However, Pennsylvania's rule provides that outstanding violations will only be considered if they occurred within the three-year period prior to the date of the

application. The Federal counterpart regulation does not place a time limitation on the occurrence of outstanding unabated violations and stipulates that the regulatory authority shall not issue the permit if any unabated violation exists, regardless of when it was incurred.

Therefore, the Director is approving the addition to section 86.36(c), except to the extent that it limits the prohibitions of permit approval to applicants with unabated violations that were incurred three years or more prior to the date of the application. Accordingly, the Director is requiring the State to further amend its program to delete the three-year time limitation.

3. Section 86.37(a)(8), (9), (10), and (11) Criteria for Permit Approval or Denial

Section 86.37(a) requires that:

No permit or revised permit application will be approved unless the application affirmatively demonstrates and the Department finds, in writing, on the basis of the information set forth in the application or from information otherwise available, which is documented in the approval, and made available to the applicant, that the following exist:

Pennsylvania is proposing to amend three of these specific findings, subsections (a)(8), (a)(10) and (a)(11), to revise the criteria upon which the regulatory authority will base its authority to make the required written findings by adding language to add those linked to the applicant through the definition of ownership and control at section 86.1.

a. Pennsylvania proposes to amend subsections 86.37(a)(8), (a)(10) and (a)(11) to add language that expands the scope of the required findings to include, in addition to the applicant, all persons owned or controlled by the applicant or persons who own or control the applicant under the definition at section 86.1. Therefore, the Director finds that, to the extent that the proposed language links the applicant with those that own or control or are owned or controlled by the applicant, it is substantively identical to, and therefore no less effective than, the language contained in the Federal counterpart at 30 CFR 773.15(b)(1).

b. Pennsylvania also proposes to further amend the language of subsections (a)(8) and (a)(11) to add provisions concerning the conditions under which a permit may be issued if an outstanding violation exists. The new language provides that if an outstanding, unabated violation exists, the permit can only be issued conditionally, provided the holder of the permit can demonstrate that the

"violation is in the process of being corrected or pending the outcome of an appeal, and the appropriate regulatory authority program having jurisdiction over the violation provides for a stay of execution of the abatement procedures or a court of competent jurisdiction has issued a supersedeas providing that relief * * *"

Counterpart Federal regulations at § 773.15 (b)(1)(i) and (ii) and (b)(2) taken together also provide for the conditional issuance of a permit if the applicant or any person who owns or controls the applicant submits proof that the violation has been or is being corrected, or proof that the applicant is pursuing in good faith a direct administrative or judicial appeal to contest the validity of the violation. While similar, Pennsylvania's proposed rules do not require that upon the affirmation of the violation by the initial judicial review the applicant submit proof, within 30 days of the initial judicial action, that the violation is being corrected. Under Pennsylvania's proposed rule, the holder of the permit is not under an obligation to demonstrate within 30 days of the initial judicial decision affirming the violation that the violation is being corrected.

Therefore, the Director finds that the proposed language at 87.37(a)(8) and (a)(11) is no less effective than the Federal regulation, except to the extent that in all cases where unabated violations exist, the permit is issued conditionally and the holder of the conditionally issued permit is not required to demonstrate within 30 days of the initial judicial decision affirming violation that the violation is being corrected. Accordingly, the Director is requiring Pennsylvania to further amend sections 86.37(a)(8) and (a)(11) to require that, within 30 days of the initial judicial review affirming a violation, the applicant submit proof that the violation has been corrected or is in the process of being satisfactorily corrected.

c. Pennsylvania proposes to revise subsection (a)(10) to add language to prohibit permit issuance upon a finding that:

* * * the applicant or the operator specified in the application or a person who owns or controls the applicant or operator or a person owned or controlled by the applicant or operator, has demonstrated a pattern of willful violations of the Acts of a nature and duration and with resulting irreparable damage to the environment as to indicate an intent not to comply with the Acts * * *.

While similar to the Federal counterpart at 773.15(b)(3), Pennsylvania's proposal limits the application of this rule to demonstrate

patterns of violations of "the Acts", which is defined by section 86.1 to include only Pennsylvania laws. Reference to "the Act" in 30 CFR 773.15(b)(3) includes SMCRA and its implementing regulations and all State and Federal programs approved under SMCRA. In its issue letter to Pennsylvania on June 11, 1992 (Administrative Record No. PA-803.11), OSM informed Pennsylvania that to be no less effective than the Federal regulations at 773.15(b)(3), their regulations must clearly require permit denial when the regulatory authority finds patterns of willful violations of SMCRA and its regulations, and for all other State SMCRA counterparts and their accompanying regulations. Pennsylvania agreed with OSM and indicated that they will address the necessary changes in future rulemaking (Administrative Record No. PA-803.14). Therefore the Director is approving the proposed revisions to section 86.37(a)(10), except to the extent that the State rules do not clearly prohibit approval of a permit application in cases where the applicant or those linked to the applicant through ownership and control have demonstrated a pattern of willful violations of the Federal SMCRA and all State and Federal programs under SMCRA. Accordingly, the Director is requiring Pennsylvania to further amend its rules to prohibit the approval of a permit application if it finds the applicant or operator or person that owns or controls the applicant has demonstrated a pattern of violations of the Federal SMCRA or all State and Federal programs under SMCRA. In the course of reviewing the proposal, OSM noted the following additional apparent deficiencies in the Pennsylvania program.

d. The existing rules at 86.37(a) stipulate that no permit or revised permit application will be approved unless the application affirmatively demonstrates and the regulatory authority makes certain findings based on "information set forth in the application or from information otherwise available." Furthermore the findings required for a permit approval under sections 86.37(a)(8), (9), (11), and (16) require only that the applicant has submitted certain statements.

The counterpart Federal regulations at 773.15(b)(1) contain an affirmative obligation that the regulatory authority shall not issue a permit based upon its review of "all available information" unless it finds that there are no unabated violations, no delinquent abandoned mine reclamation fees, and no unpaid civil penalties. It is not clear

from Pennsylvania's rules that the regulatory authority is under any obligation to verify its data using all available information. The State's rules appear to allow the approval of a permit based only on the information submitted by the applicant. Therefore, the Director finds that this omission renders the State program less effective than the Federal regulations at 30 CFR 773.15(b)(1). Accordingly, the Director is requiring that Pennsylvania further amend its program to include specific language that will ensure that the regulatory authority has the obligation to base its findings and permit approval decisions on all available information.

e. The Federal regulations at 30 CFR 773.15(b)(1) prohibit issuance of a permit to an applicant where the applicant, or anyone linked to the applicant through ownership and control, has forfeited a bond under any State or Federal program for a site where a violation upon which the forfeiture was based has not been abated. The Pennsylvania rules do not contain a similar provision. Therefore, to be no less effective than the Federal regulations, Pennsylvania must further amend its program to include language that would prohibit the issuance of a permit to an applicant where the applicant, or anyone linked to the applicant through ownership and control criteria at section 86.1, has forfeited a bond for a site where the violation on which the forfeiture was based has not been abated.

f. Pennsylvania's existing regulations at section 86.37(a)(9) require that the permit applicant submit a statement that all reclamation fees required by 30 CFR part 870 have been paid. Additionally, existing State regulations at section 86.37(a)(16) require that the applicant submit a statement that all State and Federal civil penalty assessments have been paid. Both findings must be made before the regulatory authority can approve a permit application.

While similar, the Federal regulations at 30 CFR 773.15(b)(1) prohibit permit issuance to an applicant if any coal mining and reclamation operation owned or controlled by either the applicant or by anyone who owns or controls the applicant is delinquent in the payment of abandoned mine reclamation fees or civil penalties. The State rules do not include those linked to the permit applicant through ownership and control criteria that may have delinquent reclamation fees or civil penalties. Therefore, the Director is requiring Pennsylvania to further amend 86.37(a)(9) and (16) to include language to link the required findings with those entities related to the applicant through

ownership and control criteria as defined at section 86.1.

4. 86.37(c) Criteria for Permit Approval or Denial, Final Review Before Permit Issuance

Pennsylvania is revising subsection (c) to require that, following permit approval but before permit issuance, the regulatory authority reconsider its decision to approve a permit application based upon the compliance review required by subsection 86.37(a)(8), 86.37(a)(10) and 86.37(a)(11) in light of any new information submitted under section 86.62(d) (pertaining to Identification of Interests) and 86.63(c) (pertaining to Compliance Information).

The counterpart Federal regulations at 30 CFR 773.15(e) require the regulatory authority to reconsider its initial compliance review required by § 773.15(b)(1) in light of any new compliance information submitted by the applicant. Pennsylvania's proposed rules are not as comprehensive as the Federal regulations because they do not require checks of abandoned mine reclamation fee payments required by section 86.37(a)(10), civil penalty payments required by 86.37(a)(16) or a review of the status of violations upon which any bond forfeiture was based.

This omission renders Pennsylvania's rules less effective than the Federal counterpart. Therefore, the Director is approving the addition of subsection 86.37(c) except to the extent that it fails to require the regulatory authority to include as part of the reconsideration of its decision to issue the permit, information updated for the period between permit approval and permit issuance pertaining to payment of abandoned mine land fees, civil penalties and abatement of violations upon which a bond forfeiture has been based. Accordingly, the Director is requiring Pennsylvania to further amend its rules at 86.37(c) to require that prior to permit issuance, the regulatory authority include as part of its reconsideration of its decision to issue the permit, updated information, for the applicants and all those linked to the applicant through ownership and control, regarding payment of abandoned mine land fees, civil penalties and the status of any violations upon which a bond forfeiture was based.

5. Section 86.43 Improvidently Issued Permit

Pennsylvania proposes to add section 86.43 to define the criteria under which a coal mining permit is improvidently issued and the actions the regulatory authority will take when it has found

that it improvidently issued a coal mining permit. While similar to the Federal regulation at 30 CFR 773.20, the State's new rule does not include a counterpart to the procedures to be followed when the regulatory authority has "reason to believe" that an improvidently issued permit exists (*emphasis added*). Specifically, the Federal regulations at § 773.20(a) state that "a regulatory authority which has reason to believe that it improvidently issued a surface coal mining and reclamation permit shall review the circumstances under which the permit was issued, * * *." As proposed, Pennsylvania's rules at 86.43 do not place an affirmative obligation upon the regulatory authority to take actions specified in its rules whenever it has a "reason to believe" that an improvidently issued permit exists.

Therefore, the Director is approving the proposed rules at section 86.43, except to the extent that the rules do not place an affirmative obligation upon the regulatory authority to take actions to discover if it has improvidently issued a permit whenever it has "reason to believe" that an improvidently issued permit exists.

Accordingly, the Director is requiring Pennsylvania to further amend its program to include the requirement that the regulatory authority review the circumstances under which a permit was issued, using the review criteria specified in subsection (b) of its rule, whenever it has reason to believe that the permit was improvidently issued.

6. Section 86.44 Recission of Improvidently Issued Permits

Pennsylvania proposes to add rules concerning the procedures the regulatory authority will follow in rescinding an improvidently issued permit. The proposed rules are substantively identical to the Federal regulations at 30 CFR 773.21 except the State's proposed rules do not include a counterpart to 773.21(c) concerning the permittee's right to appeal a notice of a proposed permit suspension and recission. In response to a comment by OSM regarding the availability of appeal rights, the regulatory authority indicated that Pennsylvania provides such administrative appeal rights in section 4 of the Environmental Hearing Act, 35 P.S. section 7514 (Administrative Record No. PA-803.14). This statute provides that no action of the regulatory authority which adversely affects a person will become final until that person has the opportunity to appeal the action. The regulatory authority has stated that the suspension and recission of an improvidently granted permit is an

adverse action. Therefore, Pennsylvania Law ensures that the permittee is entitled to administratively appeal the suspension and recission to the Environmental Hearing Board and that this opportunity must be afforded before the action can become final. The Director finds that the proposed rules at section 86.44 and the permittee appeal rights at section 4 of 35 P.S. section 7514 taken together are no less effective than the Federal regulations at 30 CFR 773.21.

7. Sections 86.52(c)(4) and 86.55(d) Permit Revisions and Permit Renewals

Pennsylvania is proposing to add language to require the applicant to update all information required under section 86.62 (identifications of interests) and section 86.63 (compliance information) as part of permit revision applications, section 86.53(c)(4), and as part of permit renewal applications, section 86.55(d). In cases where no such changes have occurred since previous permit approval, the rule requires the applicant to include a statement in the application to that effect. Although there are no counterpart Federal regulations, the proposed rules are consistent with OSM's policy contained in OSM Directive REC-21, *Findings and Determinations for Revisions and Renewals of Federal Permits*. Since the additional of sections 86.52(c)(4), permit revisions, and 86.55(d), permit renewals, will not render Pennsylvania's approved program inconsistent with the Federal regulations, the Director is approving the proposed changes.

8. Section 86.53 Reporting of New Information

Pennsylvania proposes to revise section 86.53 to require that the permittee notify the regulatory authority of changes in ownership and control within 45 days of the change. In addition, this section is revised to include the requirement that the permittee provide yearly updates to the information required by sections 86.62(b) and 86.62(c) (relating to identification of interests) on forms provided by the regulatory authority. Although the Federal regulations do not require such periodic updates of ownership and control information, these requirements will provide added assurance that the permittee or any one linked to the permittee through ownership and control criteria who satisfies the permit blocking criteria in 30 CFR 773.15(b)(1) will be prohibited from mining. This added assurance will not render the State program less effective than the Federal regulations

and the Director is approving the revisions to section 86.53.

9. Sections 86.62 and 87.14 Identification of Interests

a. Pennsylvania proposes to replace the existing language in section 86.62(a) with new language to define the specific information, pertaining to identification of interests, that must be provided as part of a complete permit application. Since the revised language is substantively identical to the corresponding Federal regulations at 30 CFR 778.13(e), the Director finds that the proposed rules are no less effective than these Federal regulations.

b. Pennsylvania proposes to replace the existing rules at 86.62(b) and 87.14 (1) and (2) with new language that requires the applicant to furnish certain specific information for every person who owns or controls the applicant under the definition of "owned or controlled" or "owns or controls" in section 86.1. The proposed rules are substantively identical to the Federal rules at 30 CFR 778.13(c)(1)-(3) except for an erroneous cross reference to section 86.63 in 86.62(b)(2)(ii) of the proposed rule. Pennsylvania agreed in its response to OSM's comment (Administrative Record No. PA-803.14) that the proposed rules should reference the requirements at section 86.212(c) which are the counterpart to the Federal regulations at 778.17(i).

Therefore, the Director finds Pennsylvania's proposed rules at 86.62(b) and 87.14 (1) and (2) are no less effective than the counterpart Federal regulations at 30 CFR 778.13(c)(1)-(3), except to the extent that 86.62(b)(2)(ii) contains an incorrect cross reference. Accordingly, the Director is requiring Pennsylvania to further amend its program to replace the cross reference to section 86.63 with a cross reference to section 86.212(c).

c. Pennsylvania proposes to replace the existing rules at sections 86.62(c) and 87.14(3) with new language to require submission of ownership and control information for "related entities." Section 86.62(c)(1) includes the requirement to provide specific information for "entities" that are related to the applicant through the ownership and control links defined in section 86.1. Section 87.14(3) differs slightly by requiring ownership and control information for "companies" related to the applicant. Both differ from the corresponding Federal regulations at 30 CFR 778.13(d) which require information for any surface coal mining "operation" linked to the applicant through ownership and control. In response to concerns about the meaning

of "entities" as used in the proposed rule, Pennsylvania included a definition for the term in section 86.1 which includes operations. The Director has accepted this definition with the understanding that the State interprets the term "entities" to include all surface coal mining operations owned or controlled by either the applicant or by any person who owns or controls the applicant under the definition of "owned or controlled" and "owns and controls" in section 86.1.

However, Pennsylvania's proposed rules also differ from the Federal counterpart regulations by not requiring the address of those identified and the identification of the regulatory authority to be contained in the application. This omission makes the informational requirements of the State rules less comprehensive than the Federal counterpart at 30 CFR 778.13(d) (1) and (2). Therefore, the Director is approving the proposed revision except to the extent that the proposed rules fail to require the address and the name of the regulatory authority for current Federal and State permits. Accordingly, the Director is requiring Pennsylvania to further amend its program to include the requirement to provide the address and identification of the regulatory authority for "entities" or "companies" linked to the permit applicant through ownership and control.

d. Pennsylvania proposes to add as part of 86.62(c)(2), a requirement that for each person listed in the "identification of related entity" provision at section 86.62(b)(1) specific information pertaining to other entities the person currently owns or owned within the last five years, as well as specified information for pending mining operations. Since the State's proposed rules are substantively identical to the Federal regulations at 30 CFR 778.13(c) (4) and (5), the Director finds section 86.62(c)(2) to be no less effective than the cited Federal regulations.

e. Pennsylvania proposes to add the requirement, at section 86.62(d), that each applicant update the information supplied under section 86.62 for the time period from when a permit is approved until it is issued. Since section 86.62(d) is substantively identical, the Director finds it to be no less effective than the counterpart Federal regulation at 30 CFR 778.13(i).

10. Section 86.63 Compliance Information

a. Pennsylvania proposes to revise 86.63(a)(1) to expand the existing requirement concerning whether or not the applicant has had a Federal or State

permit suspended or revoked or has forfeited a mining bond or similar security to include persons linked to the applicant through the definition of "owned or controlled" or "owns or controls" at section 86.1. Since this requirement is substantively identical to the counterpart Federal regulation at 30 CFR 778.14(a), the Director finds that the proposed revision is no less effective than that Federal regulation.

b. Pennsylvania proposes to revise section 86.63(a)(2), the requirement to provide a description of the actions identified in section 86.63(a)(1), to add language to require identification of the Mine Safety and Health Administration (MSHA) number and date of issuance of the suspended or revoked permit and the requirement that the statement include the name of the person to whom the suspension, revocation or forfeiture was issued. Although the Federal regulations at 30 CFR 778.14(b) do not require an explanation of the actions to include the MSHA identification number with the date of issuance or the name of the person to whom the action was issued, the additional requirements will not render the States rules less effective than the Federal counterparts. Therefore, the Director is approving the proposed revisions to section 86.63(a)(2).

c. Pennsylvania proposes to replace the existing language of section 86.63(a)(3) with language requiring the applicant to list certain specific information on all violations incurred within the three-year period preceding the application date and all unabated cessation orders and unabated air and water quality violation notices received prior to the date of the application by either the applicant or any person linked to the applicant through an ownership and control relationship. The proposed language is substantively identical to the counterpart Federal regulations at section 778.14(c), except that Pennsylvania omitted reference to "cessation orders" in the last sentence of the paragraph, "The application shall also contain a statement regarding each violation notice including * * *". Pennsylvania has indicated to OSM (Administrative Record No. PA-803.14) that the omission will be corrected in subsequent rulemaking.

Therefore, the Director finds the proposed revisions to section 86.63(a)(3) to be no less effective than the corresponding Federal regulations, except to the extent that the rule omits the requirement to supply information required by 86.63(a)(3) (i)-(viii) for cessation orders received by either the applicant or by any person who owns or controls the applicant. Accordingly,

Pennsylvania shall further amend its rules to require that all applications for surface mining permits include the specific information required by section 86.63(a)(3) (i)-(viii) for all cessation orders received prior to the date of the application.

d. Pennsylvania proposes to add provisions at section 86.63(c) concerning the applicant's obligation to update compliance information for the time period following permit approval but before permit issuance. The Director finds that Pennsylvania's proposed rule is substantively identical and, therefore, no less effective than the corresponding Federal regulation at 30 CFR 778.14(d).

11. Section 86.212 Federal Minimum Enforcement Action

a. Pennsylvania proposes to revise section 86.212 by, in addition to making several minor grammatical changes, adding subsection (c) to require that within 30 days after issuance of a cessation order, the permittee shall submit information to update the ownership and control information required under 86.62, concurrent from the date of the issuance of the cessation order. Since the proposed rule is substantively identical to the counterpart Federal regulations at 773.17(i), the Director finds that it is no less effective than that Federal regulation.

b. Pennsylvania proposes to add language at subsection (d) to require that the regulatory authority notify, in writing, persons identified as owning or controlling the permittee that a cessation order was issued and that the person has been identified as an owner or controller responsible for the correction of the violation. The Director finds that the proposed rule is substantively identical to and, therefore, no less effective than the corresponding Federal regulation at 30 CFR 843.11(g).

IV. Summary and Disposition of Comments

Public Comment

The public comment period and opportunity to request a public hearing announced in the April 13, 1992, Federal Register ended on May 13, 1992. Written comments and a request for a public meeting were received from the Pennsylvania Coal Association (PCA). The public meeting was held on June 30, 1992, and comments were received from the PCA. The comments presented by the PCA pertained to the same concerns expressed in their written comment submittal.

All substantive comments received during the comment period are discussed below.

The PCA commented that Pennsylvania's proposed ownership and control regulations go far beyond the counterpart Federal regulations and are inconsistent with SMCRA. Specifically, PCA commented on the following proposed ownership and control regulations:

a. The PCA commented that the term "contractor" included in the States definition of "owned or controlled" or "owns or controls" is not in the Federal regulations at 30 CFR 773.5. As stated in Finding 1(b), the State's proposal to include "contractor" is consistent with the Federal definition in cases where the contractor exercises control over the mining operation. Upon that basis the Director determined that the State's rules are not inconsistent with SMCRA or the counterpart Federal regulations.

b. The PCA commented that Pennsylvania's proposal to define "related party" does not give consideration to the quality of the relationships between the parties. The PCA added that the regulatory authority should look at whether the presumed related party actually has any control over the permittee. As discussed in Finding 1(c), the State's revision merely moves the definition of related party from section 86.37(a)(8) into the definitions at section 86.1 and this move does not render the program less effective than the Federal regulations.

c. The PCA commented that Pennsylvania's proposal requires updates of ownership and control information more often than required by the Save our Cumberland Mountain agreement. As discussed in Findings 7 and 8, although there are no Federal counterpart regulations, the proposed rules are consistent with OSM's policies and are not inconsistent with the Federal regulations.

d. The PCA commented that Pennsylvania does not provide an opportunity for an adjudicatory hearing on the determination that an applicant has demonstrated a pattern of willful violations of the Acts as is required by the Federal counterpart at 30 CFR 773.15(b)(3). As noted in Finding 6, section 4 of the Environmental Hearing Board Act, 35 P.S. section 7514 mandates that any person adversely affected by an action of the regulatory authority shall have the right to appeal the action to the Environmental Hearing Board before the action becomes final. Therefore, Pennsylvania provides appeal rights to a permit applicant that are not inconsistent with the Federal counterpart regulations.

Agency Comments

Pursuant to Section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(ii)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Pennsylvania program. Responses were received from the Department of Labor, Mine Safety and Health Administration, District 1 and 2; the Department of Interior, Bureau of Mines; and the Department of Agriculture, Soil Conservation Service. The responses did not contain any comments concerning the proposed ownership and control rule revisions.

V. Director's Decision

Based on the findings discussed above, the Director is approving, with the additional required amendments noted below, Pennsylvania's program amendment pertaining to ownership and control provisions of its rules as submitted on December 18, 1991.

The Director is requiring the following amendments at 30 CFR 938.16:

As discussed in Finding 2, further revision of section 86.36(c) to delete the three-year limitation on the time period for which the regulatory authority is responsible for the review of the compliance history of the applicant or anyone who owns or controls the applicant.

As discussed in Finding 3(b), further revision of sections 86.37(a)(8) and (a)(11) to require that, within 30 days of the initial judicial review decision affirming a violation, the applicant submit proof that the violation has been corrected or is in the process of being satisfactory corrected.

As discussed in Finding 3(c), further revision of section 86.37(a)(10) to include specific language to prohibit the approval of a permit application if the regulatory authority finds that the applicant or the operator specified in the application or a person who owns or controls the applicant or operator or a person owned or controlled by the applicant or operator, has demonstrated a pattern of willful violations of the Federal SMCRA and all State programs approved under SMCRA.

As discussed in Finding 3(d), further revision to section 86.37(a) to include specific language to require that the regulatory authority findings and permit approval decisions are based on all available information.

As discussed in Finding 3(e), further revision of section 86.37(a) to add the requirement to prohibit the approval of a permit if it was determined that the applicant or anyone linked to the

applicant through the definition of "owned or controlled" at section 86.1 has forfeited a bond for a site where the violation upon which the forfeiture was based has not been abated.

As discussed in Finding 3(f), further revision of sections 86.37(a)(9) and (a)(16) to require the findings concerning payment of abandoned mine reclamation fees and civil penalties to include a review of all persons linked to the applicant through the definition of ownership and control provisions at section 86.1.

As discussed in Finding 4, further revision of section 86.37(c) to require that following permit approval but prior to permit issuance that the regulatory authority include as part of its decision to issue the permit, a review of any new information for the applicant and all those linked to the applicant through ownership and control, regarding payment of abandoned mine land fees, civil penalties and the status of violations upon which bond forfeiture was based.

As discussed in Finding 5, further revision of section 86.43 to include the requirement that the regulatory authority review the circumstances under which a permit was issued, using the approved review criteria, whenever it has reason to believe that the permit was improvidently issued.

As discussed in Finding 9(b), further revision of section 86.62(b)(2)(ii) to replace the cross reference to section 86.63 with a cross reference to section 86.212(c).

As discussed in Finding 9(c), further revision to section 86.62(c) and 87.14(3) to require the applicant to provide its address and the identification of the regulatory authority for current Federal and State permits held by "entities" or "companies" linked to the applicant through ownership and control.

As discussed in Finding 10(c), further revision to section 86.63(a)(3) to require that all applications for surface mining permits include the information required by section 86.63(a)(3)(i)-(viii) for all cessation orders received by either the applicant or by any person linked to the applicant through ownership and control as defined in section 86. prior to the date of the application.

Effect of the Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus any changes

to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Pennsylvania program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Pennsylvania of only such provisions.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 et seq.) or the Clean Air Act (42 U.S.C. 7401 et seq.) The Director has determined that this amendment contains no such provisions and that EPA concurrence is therefore unnecessary.

VI. Procedural Determinations

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the

other requirements of 30 CFR parts 730, 731 and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 et seq.

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities.

Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 12, 1992.

Ronald C. Recker,
Acting Assistant Director, Eastern Support Center.

For the reasons set forth in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 938—PENNSYLVANIA

1. The authority citation for part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 et seq.

2. Section 938.15, is amended by adding a new paragraph (w) to read as follows:

§ 938.15 Approval of regulatory program amendments.

(w) With the exception of those provisions identified herein, the amendment submitted to OSM on December 18, 1991 (pertaining to Ownership and Control rules) is approved effective December 30, 1992, provided Pennsylvania promulgates these regulations in a form identical to that submitted to OSM. The amendment consists of the following modifications to the Pennsylvania program (25 PA Code Section):

86.1 Definitions.

86.36(c) Review of Permit Application (except to the extent that it limits the prohibitions on permit approval to applicants or those linked to the applicant through ownership and control criteria with unabated violations that were incurred within three-years of the date of the application).

86.37(a) Criteria for Permit Approval or Denial (except to the extent that:

i. 86.37(a)(8) and (a)(11) would fail to require the applicant within 30 days of the initial judicial review affirming a violation, to submit proof that the violation has been corrected or is in the process of being satisfactorily corrected.

ii. 86.37(a)(10) does not clearly prohibit approval of a permit application in cases where the applicant or those linked to the applicant through ownership and control have demonstrated a pattern of willful violations of the Federal SMCRA and all State and Federal programs approved under SMCRA;

iii. 86.37(a) does not clearly require that the regulatory authority base its decision to approve a permit application on its review of all available information;

iv. 86.37(a) does not prohibit the issuance of a permit where the applicant or anyone linked to the applicant through ownership and control criteria has forfeited a bond for a site where the violation upon which the forfeiture was based has not been abated; and

v. 86.37(a)(9) and (a)(16) fail to require the findings concerning payment of abandoned mine reclamation fees and civil penalties to include a review of persons linked to the applicant through the ownership and control provision at section 86.1).

86.37(c) Final Review Before Permit Issuance (except to the extent that the rules do not require that the regulatory authority will include as a basis for its reconsideration of its decision to approve the application, updated information pertaining to whether abandoned mine land fees have been paid, civil penalties have been paid and whether the violations on which a bond forfeiture was based have been abated).

86.43 Improvidently Issued Permits (except to the extent that the rules do not place an affirmative obligation on the regulatory authority to take actions to discover if it has improvidently issued a permit whenever it has a "reason to believe" that an improvidently issued permit exists).

86.44 Recission of Improvidently Issued Permits.

86.52(c)(4) Permit Revisions.

86.53 Reporting of New Information.

86.55(d) Permit Renewals.

86.62 Identification of Interests (except to the extent that:

i. 86.62(b)(2)(ii) incorrectly cross references Section 86.63 instead of section 86.212(c); and

ii. 86.62(c) does not require applications to include the addresses of related entities linked to the applicant through ownership and control criteria and to include the name of the regulatory authority for each Federal and State permit).

86.63 Compliance Information (except to that 86.63(a)(3) omits the requirement for the applicant to provide information required by 86.63(a)(3)(i-viii) for all cessation orders received either by the applicant or by any person who owns or controls the applicant).

86.212 Federal Minimum Enforcement Action.

87.11 Definitions.

87.14 Identification of Ownership (except to the extent that 87.14(3) does not require applications to include the address of related companies linked to the applicant through ownership and control criteria and to include the name of the regulatory authority for each Federal and State permit).

3. Section 938.16 is amended by adding new paragraphs (rr)-(bbb) to read as follows:

§ 938.16 Required regulatory program amendments.

(rr) By May 1, 1993, Pennsylvania shall submit a proposed amendment to section 86.36(c) to require permit denial for unabated violations of any Federal or State program under SMCRA, without the three-year limitation.

(ss) By May 1, 1993, Pennsylvania shall submit a proposed amendment to section 86.37(a)(8) of (a)(11) to require that, within 30 days of the initial judicial review affirming a violation, the applicant submit proof that the violation has been corrected or is in the process of being satisfactorily corrected.

(tt) By May 1, 1993, Pennsylvania shall submit a proposed amendment to section 86.37(a)(10) to require that all violations of the Federal SMCRA and all programs approved under SMCRA be considered in determining whether there is a demonstrated pattern of willful violations.

(uu) By May 1, 1993, Pennsylvania shall submit a proposed amendment to section 86.37(a) to require that the criteria upon which the regulatory authority bases its decision to approve or deny a permit application are based on all information available to the regulatory authority.

(vv) By May 1, 1993, Pennsylvania shall submit a proposed amendment to section 86.37(a) to include language that

would prohibit permit approval if the applicant or anyone linked to the applicant through the definition of "owned or controlled" or "owns or controls" has forfeited a bond and the violation upon which the forfeiture was based remains unabated.

(ww) By May 1, 1993, Pennsylvania shall submit a proposed amendment to sections 86.37(a)(9) and (a)(16) to require denial of a permit if it finds that those linked to the applicant through the definition of "owned or controlled" or "owns or controls" are delinquent in payment of abandoned mine reclamation fees or delinquent in the payment of State and Federal final civil penalty assessments.

(xx) By May 1, 1993, Pennsylvania shall submit a proposed amendment to section 86.37(c), to require that the regulatory authority's reconsideration of its decision to approve the permit include a review of information, updated for the period from permit approval to permit issuance, pertaining to the payment of abandoned mine reclamation fees and civil penalty fees and the status of unabated violations upon which a bond forfeiture was based.

(yy) By May 1, 1993, Pennsylvania shall submit a proposed amendment to section 86.43, to require the regulatory authority to review the circumstances under which a permit was issued whenever it has reason to believe that the permit may have been improvidently issued.

(zz) By May 1, 1993, Pennsylvania shall submit a proposed amendment to section 86.62(b)(2)(ii) to correct the cross-reference to 86.63 with a reference to section 86.212(c).

(aaa) By May 1, 1993, Pennsylvania shall submit a proposed amendment to sections 86.62(c) and 87.14(3) to include the requirement that the application include the address for each permit held by a related entity or company, and identification of the regulatory authority for each such permit.

(bbb) By May 1, 1993, Pennsylvania shall submit a proposed amendment to section 86.63(a)(3) to require that all applications for surface mining permits include the specific information required by section 86.63(a)(3)(i)-(viii) for all cessation orders received, by the applicant and anyone linked to the applicant through ownership and control, prior to the date of the application.

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 500

Foreign Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: As a further step in the process of normalization of relations between the United States and Vietnam, the Office of Foreign Assets Control ("FAC") is amending its regulations to authorize persons subject to U.S. jurisdiction to enter into contracts with Vietnam or Vietnamese nationals, or contracts in which Vietnam or Vietnamese nationals have an interest, the performance of which is contingent upon the lifting of the embargo on Vietnam, and to enter into commercial and financial transactions in connection with obtaining or preparing to perform such contracts.

EFFECTIVE DATE: December 14, 1992.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief of Licensing (tel.: 202/622-2480), Dennis P. Wood, Chief of Compliance Programs (tel.: 202/622-2490), or William B. Hoffman, Chief Counsel (tel.: 202/622-2410), Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION: In implementation of the President's announcement on December 15, 1992, FAC is amending the Foreign Assets Control Regulations, 31 CFR part 500 (the "FACR"), to add § 500.574, authorizing persons subject to U.S. jurisdiction to enter into executory contracts with Vietnam or Vietnamese nationals, or executory contracts in which Vietnam or a Vietnamese national has an interest, the performance of which cannot begin until the Vietnam embargo is lifted or modified to permit performance. The signing of each executory contract must be reported to FAC within 10 days. Financial transactions incident to the signature of these contracts, however, must be specifically licensed on a case-by-case basis.

Commercial and financial transactions necessary to obtaining and preparing to perform such executory contracts will be licensed on a case-by-case basis. Activities eligible for specific licensing include opening offices in Vietnam, hiring staff, writing and designing plans, carrying out preliminary feasibility studies and engineering and technical surveys, and import, export, and service transactions

incident to the foregoing. Specific licenses issued pursuant to this section will require reporting to FAC on commercial and financial transactions entered into by the licensee.

Exports or reexports to Vietnam of goods and technical data or of the direct products of technical data (regardless of U.S. content), in connection with activities licensed by FAC may require authorization from the U.S. Department of Commerce pursuant to the Export Administration Regulations, 15 CFR parts 768-799.

Because the FACR involve a foreign affairs function, Executive Order 12291 and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

This rule is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act. For this reason, the collection of information contained in FACR § 500.574 has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1505-0096. Comments concerning the average annual burden and suggestions for reducing this burden should be directed to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503, with copies to the Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW.—Annex, Washington, DC 20220. Any such comments should be submitted not later than 60 days from publication.

The collections of information in this rule are contained in FACR § 500.574(a). This information is required by the FAC for compliance, civil penalty, and enforcement purposes. This information will be used to facilitate U.S. financial and export transactions licensed pursuant to this final rule, to determine whether persons subject to the requirements of the FACR are in compliance with applicable requirements, and to determine whether and to what extent civil penalty or other enforcement action is appropriate. The likely respondents are business organizations.

Estimated total annual reporting and or recordkeeping burden: 200 hours.

The estimated annual burden per respondent/recordkeeper is expected to be one hour.

The estimated number of respondents and/or recordkeepers: 200.

Estimated annual frequency of responses: On occasion.

List of Subjects in 31 CFR Part 500

Administrative practice and procedure, Banking, Exports, Foreign trade, Reporting and recordkeeping requirements, Services, Vietnam.

For the reasons set forth in the preamble, 31 CFR part 500 is amended as follows:

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

1. The authority citation for part 500 continues to read as follows:

Authority: 50 U.S.C. App. 5, as amended; E.O. 9193, 7 FR 5205, 3 CFR 1938-1943 Cum. Supp., p. 1174; E.O. 9889, 13 FR 4891, 3 CFR 1943-1948 Comp., p. 748.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

2. Section 500.574 is added to subpart E to read as follows:

§ 500.574 Executory contracts and related transactions authorized.

(a) *Executory contracts.* (1) Persons subject to U.S. jurisdiction are authorized to enter into executory contracts with Vietnam or Vietnamese nationals, or executory contracts in which Vietnam or a Vietnamese national has an interest, the performance of which is contingent upon the lifting or modification of the embargo on Vietnam to permit such performance.

(2) Within 10 business days of signing an executory contract authorized pursuant to paragraph (a) of this section, the person subject to U.S. jurisdiction must file a copy of the contract with the Office of Foreign Assets Control, Compliance Programs Division, 1500 Pennsylvania Avenue, NW.—Annex 2131, Washington, DC 20220, referencing the fact that the contract was entered into pursuant to 31 CFR 500.574(a).

(3) Specific licenses will be issued on a case-by-case basis to authorize financial transactions such as the payment of deposits, earnest money, signing bonuses, and administrative and registration fees incident to the signature of specific executory contracts authorized pursuant to paragraph (a)(1) of this section. The number of the pertinent license must be referenced in all funds transfers and other banking transactions through banks subject to U.S. jurisdiction made in connection with the contract.

(b) *Preparatory transactions.* (1) Specific licenses will be issued authorizing commercial and financial transactions necessary to obtaining and preparing to perform executory contracts authorized pursuant to paragraph (a)(1) of this section. These commercial and financial transactions include:

- (i) Opening offices in Vietnam;
- (ii) Hiring staff;
- (iii) Writing and designing plans;
- (iv) Carrying out preliminary feasibility studies and engineering and technical surveys; and

(v) Import, export, and service transactions incident to the foregoing.

(2) Specific licenses issued pursuant to paragraph (b)(1) of this section will, to the extent feasible, encompass commercial and financial transactions incident to the licensed commercial purpose or activity.

Note: Exports or reexports to Vietnam of goods and technical data, or of the direct products of technical data (regardless of U.S. content), in connection with activities licensed by FAC may require authorization from the U.S. Department of Commerce pursuant to the Export Administration Regulations, 15 CFR parts 768-799.

(3) The number of the pertinent license must be referenced in all funds transfers and other banking transactions through banks subject to U.S. jurisdiction in connection with preparatory transactions under paragraphs (b) (1) and (2) of this section.

Dated: December 23, 1992.

R. Richard Newcomb,
Director, Office of Foreign Assets Control.

Approved: December 23, 1992.

John P. Simpson,
Acting Assistant Secretary (Enforcement).
[FR Doc. 92-31736 Filed 12-24-92; 11:47 am]
BILLING CODE 4810-25-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL-4549-4]

Kentucky; Schedule of Compliance for Modification of Kentucky's Hazardous Waste Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Kentucky's Compliance Schedule to Adopt Program Modifications.

SUMMARY: On September 22, 1986, EPA promulgated amendments to the deadlines for State program modifications, and published

requirements for States to be placed on a compliance schedule to adopt the necessary program modifications. EPA is today publishing a compliance schedule for Kentucky to modify its program in accordance with § 271.21(g) to adopt the Federal program modifications.

EFFECTIVE DATE: December 30, 1992.

FOR FURTHER INFORMATION CONTACT:
Leonard W. Nowak, USEPA, Region IV,
345 Courtland Street, Atlanta, Georgia
30365, (404) 347-2234.

SUPPLEMENTARY INFORMATION:

A. Background

Final authorization to implement the Federal hazardous waste program within the State is granted by EPA if the Agency finds that the State program (1) is "equivalent" to the Federal program, (2) is "consistent" with the Federal program and other State programs, and (3) provides for adequate enforcement (Section 3006(b), 42 U.S.C. 6226(b)). EPA regulations for final authorization appear at 40 CFR parts 271.1-271.24. In order to retain authorization, a State must revise its program to adopt new Federal requirements by the cluster deadlines specified in 40 CFR 271.21. See 51 FR 33712, September 22, 1986, for a complete discussion of these procedures and deadlines.

B. Kentucky

Kentucky initially received final authorization for the RCRA Base Program on January 31, 1985. (50 FR 2530, January 17, 1985). Kentucky received final authorization for Radioactive Mixed Waste equivalence on December 19, 1989 (53 FR 41164). Kentucky received final authorization for federal regulations promulgated between July 1, 1985, and June 30, 1986, known as Non-HSWA Cluster II on March 30, 1989, (54 FR 1940, January 18, 1989). Kentucky received final authorization for the requirements prior to Non-HSWA Cluster I, Non-HSWA Cluster III, and Availability of Information on May 15, 1989, (54 FR 20849, March 16, 1989). Today EPA is publishing a compliance schedule for Kentucky to obtain program revisions for the federal program requirements promulgated between July 1, 1990, and June 30, 1991, known as RCRA Cluster I.

The State has agreed to obtain the needed program revisions according to the following schedule:

Action	Mile-stone
Regulations drafted and submitted to Kentucky Department of Law for review and development of the Attorney General's Statement	12/92
Draft regulations and Statement from Commissioner of Law submitted to EPA. Regulation drafts submitted to Kentucky Environmental Quality Commission	1/93
Regulation drafts filed with Kentucky Legislative Research Commission as proposed regulation changes	2/93
Proposal published in Kentucky Administrative Register	3/93
Public hearing and close of public comment period	3/93
Comments due from EPA	3/93
Statement of Consideration responding to comments	4/93
Proposed regulation republished in Kentucky Administrative Register	5/93
Review by Administrative Regulations Review Subcommittee	5/93
Review by Subcommittee on Agriculture and Natural Resources, and effective date of regulations	6/93
Final authorization application submitted to EPA	7/93

Kentucky expects to submit an application to EPA for authorization of the above-mentioned program revisions by July 1, 1993.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act, as amended by the RCRA of 1976, as amended, 42 U.S.C. 6912(a), 6926, and 6974(B).

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 92-31438 Filed 12-29-92; 8:45 am]

BILLING CODE 8580-50-M

40 CFR Part 300

[FRL-4549-3]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of a site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Adrian Well Field superfund site in Adrian, Minnesota, from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the State of Minnesota have determined that all appropriate Fund-financed responses under CERCLA have been implemented

and that no further cleanup under CERCLA is appropriate. Moreover, EPA and the State of Minnesota have determined that remedial actions conducted at the site to date have been protective of public health, welfare, and the environment.

EFFECTIVE DATE: December 30, 1992.

FOR FURTHER INFORMATION CONTACT: Edward J. Hanlon, Remedial Project Manager, Office of Superfund, U.S. Environmental Protection Agency, Region V, 77 West Jackson Blvd. (HSRM-6J), Chicago, IL 60604; (312) 353-9228, or Gina Weber (P19-J), Office of Public Affairs, U.S. EPA, Region V, 77 West Jackson Blvd., Chicago, Illinois, 60604, (312) 886-6128.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Adrian Well Field Site, Adrian, Minnesota.

A Notice of Intent to Delete for this site was published September 1, 1992 (57 FR 39659). The closing date for comments on the Notice of Intent to Delete was October 1, 1992. EPA received no comments.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Air pollution control, Hazardous waste.

Dated: December 4, 1992.

David A. Ullrich,
Acting Regional Administrator, USEPA
Region 5.

For the reasons set out in the preamble, 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601-9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp; p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp; p. 193.

Appendix B [Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the site for "Adrian Municipal Well Field," Adrian, Minnesota; and by revising the total number of sites, "1,083" to read "1,082".

[FR Doc. 92-31439 Filed 12-29-92; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 5400, 5460, and 5470

[WO-230-6310-02-24-1A; Circular No. 2647]

RIN 1004-AC03

Sales of Forest Products: Contract Administration: Contract Modification—Extension—Assignment

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the forest product regulations to provide for more flexibility in setting due dates for periodic payments when circumstances beyond the control of the purchaser prevent contract performance for a substantial period of time during the operating season. The rule provides the flexibility needed by removing the specified dates for payment of periodic payments. These provisions relieve a purchaser from the unnecessary burden of a large payment becoming due when such purchaser was prevented from generating any cash flow from a contract by certain circumstances beyond its control. This provision does not diminish the periodic payment provision's intended effect of encouraging prompt performance on timber sale contracts. The rule also provides for reduction to 5 percent of the full amount and partial refund of the first installment during the period when the contracting officer requests interruption or delay of operations for a period in excess of 60 days during the operating season.

EFFECTIVE DATE: January 29, 1993.

ADDRESSES: Suggestions or inquiries may be mailed to: Director (230), Bureau of Land Management, room 204 L Street Building, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Bob Bierer, (202) 653-8864.

SUPPLEMENTARY INFORMATION: A proposed rule amending the regulations governing periodic payments and

payment of the first installment on timber sale contracts was published on August 21, 1992 (57 FR 37936) with a request for comments. The comment period expired on September 21, 1992. The BLM received 10 letters containing comments on the proposed rule. Three letters from timber purchasers contained general comments of support, and four letters from timber purchasers, two letters from associations and one letter from a law firm contained specific comments. The specific comments contained in these letters and the response to the comments are listed below.

The Bureau of Land Management (BLM) has determined that the regulations governing periodic payments and payment of the first installment on timber sale contracts could cause an unnecessary burden on entities holding those contracts. Many BLM timber sales are being suspended for consultation with the U.S. Fish and Wildlife Service, or by injunctions and administrative stays resulting from court actions and appeals concerning endangered species and old growth timber. The regulations provide no mechanism for relief to timber sale purchasers who are subject to unnecessary financial hardships due to these delays. Therefore, this rule was proposed to provide some flexibility for BLM to provide relief in such situations where a purchaser is delayed from operating a timber sale contract by circumstances beyond its control.

On August 19, 1992, the Bureau of Land Management published a final rule (57 FR 37475) providing for an extension of timber sale contracts without reappraisal in certain situations. The rule was intended to provide more fairness and flexibility in granting timber sale contract extensions. Some of the comments on that rule pointed out that there was a need to provide for deferment of the periodic payments due on the first and second anniversary of some timber sale contracts. The same reasons that justify a contract extension should justify a deferment of the periodic payments.

Regulations were published on May 14, 1990 (55 FR 19886) requiring payment of 20 percent of the total purchase price by the first anniversary of all timber sale contracts with a term 19 months or longer and payment of 40 percent of the total purchase price by the second anniversary of all contracts with a term 27 months or longer. The regulations allow credit toward the payments for the value of road construction completed by the purchaser. The reason for those regulations was to encourage prompt

performance on timber sale contracts and to discourage speculation. However, when the purchaser is prevented from operating the contract due to certain circumstances beyond its control, the incentives for prompt performance cannot function as intended and a financial hardship is imposed on the purchaser.

Under the terms of many timber sale contracts there are periods during the year when certain operations on the contract are not permitted, such as building roads during the winter rainy season, harvest operations during the winter in winter range areas for certain wildlife species, thinning operations during the spring sap flows, harvest operations during the nesting period near bald eagle nests, and so forth. There are also seasons of the year when harvesting operations are not feasible due to normal adverse weather conditions, such as snow in high elevations during the winter. These seasonal restrictions tend to shorten the time when a purchaser can actually accomplish the work required to harvest a timber sale. When a purchaser is delayed for a substantial period during the normal operating season, it may mean that operations are delayed for a whole year. During a short operating season, any delay may well mean that a purchaser has to wait until the next season to complete an operation and generate some cash flow from a timber sale contract, or qualify for a credit toward the periodic payment due from the value of road construction completed.

A periodic payment obligation on a timber sale contract could amount to a considerable financial hardship on a purchaser, if conditions beyond the control of such purchaser prevent the purchaser from completing road construction or harvesting timber from a timber sale contract for a substantial period of time. In this situation, the rule allows the purchaser to request adjustment of periodic payment due dates in writing. The contracting officer would be required to issue a decision on such requests within 15 days of receipt of the request.

The rule allows the necessary flexibility to defer periodic payments under certain circumstances. The rule allows adjustment of the periodic payment due dates when the contracting officer delays a purchaser's operations prior to the due date and for more than 30 days during an operating season for factors beyond the control of the purchaser, other than market fluctuations. Periodic payment due dates may be adjusted to provide a period of operating time equal to that

time that would have been available to the purchaser, prior to the periodic payment due date, without such a delay. The rule provides the flexibility needed by removing the specified dates for payment of periodic payments in § 5461.2(a)(3) of the existing regulations. The due dates for periodic payments will be set out in the contract.

From time to time operations are delayed for substantial periods due to injunctions, or consultation and other requirements under the Endangered Species Act. Where a purchaser has large sums of money tied up in the first installment on such contracts, delays may cause financial hardship, especially on smaller companies with limited capital, that may be prevented from participating in other contracts during such extended delays.

The rule provides for a reduction of the first installment held by the BLM during such periods of delay. The purchaser may request and the contracting officer may grant a reduction to 5 percent of the first installment payment specified in the timber sale contract when the contracting officer requires an interruption or delay of operations on a contract for a period in excess of 30 days during the operating season. Upon notice from the contracting officer that operations may proceed, the purchaser will have 15 days to restore the first installment to the full amount. No timber is to be cut or removed from the contract area before the first installment is restored to the full amount specified in the timber sale contract. Failure to restore the first installment within the 15-day period will be considered a breach of the contract and the contracting officer may cancel the contract.

1. Several comments addressed whether a 60-day delay should be required to justify reducing the first installment payment to 5 percent of the requirement in the timber sale contract. The recommendations were for a lesser period of 30 or 10 days. Some of these comments also recommended specifically directing the contracting officer to grant the request for reduction of the first installment and recommended that BLM approval be required to be granted in 15 days, rather than 30 days as proposed. BLM agrees that a 60-day delay is too long to require for approval of the first installment reduction, considering that the operating season on many timber contracts has been reduced significantly through seasonal restrictions imposed by BLM in the past several years. The seasonal restrictions are needed to accommodate environmental

considerations on timber sale contracts. The final rule has been amended to allow the contracting officer to approve a request for reduction of the first installment payment when there is reason to believe a contract delay will last longer than 30 days, and such a request is required to be answered by the contracting officer within 15 days. The final rule removes the requirement to wait 30 days before making a request for the reduction. The recommendation for clarification to the contracting officer which would make such a reduction mandatory was not included in the rule. In the event a purchaser disagrees with a decision to not allow a reduction of the first installment, the purchaser can pursue relief through the disputes clause in the timber sale contract.

2. Two comments stated that the proposed rule does not provide for refund of unencumbered money from a period payment made before a delay of operations is required by the contracting officer. The requirement for the periodic payment was known to the purchaser prior to the delay. The purpose for periodic payments is to reduce speculative bidding and serve as an incentive for the purchaser to perform on the contract. Implementation of this comment would neutralize the purpose for requiring periodic payments, and reward timber purchasers who did not perform when performance was possible. This suggestion was not adopted.

3. Two comments stated that the rule should provide for refund of unencumbered money from second and subsequent installment payments made before a delay of operations requested by the contracting officer. Most timber purchasers use a payment bond for cutting and/or removal of timber prior to the payment of the second installment or subsequent installments, in which case payments are made on a monthly basis after timber is removed from the contract area. In this situation payments are "encumbered." In the event a timber purchaser would make a cash payment in advance of cutting or removal, moneys could be considered "unencumbered" at the time of a delay. However, it is already within the authority of the contracting officer to refund the "unencumbered" money or credit such amounts to other contracts upon the written request of the purchaser. This suggestion was not adopted.

4. Two comments suggested that proposed § 5461.2(a)(5) did not make it clear that the value of payments already made is considered credit toward the amount due for periodic payments as well as satisfactory completed road

construction. The language has been amended to clarify this point.

5. One comment suggested this rule should be retroactive for all contracts delayed from operating as a result of consultation for the northern spotted owl with the United States Fish and Wildlife Service. It was BLM's intent that upon the effective date of this final rule the regulation would apply to all existing contracts. Language has been added to § 5461.2(a)(3) and (a)(5) to clarify retroactive application.

6. Two comments identified concern that the language in the proposed rule merely removed the requirement for periodic payments to be made on a specific date, but did not make specific provision that the purchaser could be relieved from this contract requirement when circumstances beyond the purchaser's control delay operations. Also, both comments suggested that delays greater than 10 days should justify payment deferral. A sentence was added to § 5461.2(a)(5) to explain deferral options for delays greater than 30 days, and to make it clear that the contract may be amended to adjust the periodic payment requirement upon receipt of a written request from the purchaser that demonstrates qualification for the adjustment. A 10-day delay to qualify for periodic payment deferral is not considered a significant time for adjustment of a periodic payment requirement, considering that a purchaser would have known for one or two years that timber payments and/or the value of satisfactorily completed road construction equal to 20 or 40 percent of the total purchase price were required.

7. One comment suggested that by removing the introductory paragraph in the present § 5461.2 and imposing the use of the term "periodic payments" in the proposed rule, the ability of a purchaser to furnish a performance bond to meet the periodic payment requirements under § 5451.2 has been eliminated. This is not true because the existing regulations do not provide for the delay of the first anniversary date or second anniversary date payments by an increase in the performance bond. The final rule does not affect the option for an increase in the performance bond above the minimum to allow cutting timber before payment of second or subsequent installments. The introductory paragraph of the existing regulation refers to "installment payments," and paragraph (a)(3) requires 20 or 40 percent payment of the total purchase price, depending on the circumstances. These payments are time payments, which have nothing to do

with installment payments. Section 5461.2(b) allows delayed payment of installments if a bond is furnished as provided in § 5451.2. The final rule does not affect this option for the purchaser. The final rule provides for deferral of periodic payments in the event the contract cannot be operated due to delays beyond the control of the purchaser. A performance bond increase above the minimum as provided in § 5451.2(a) is not designed to relieve operators of financial difficulties caused by delays, but to enable operators to cut timber without having to make extremely large installment payments. This suggestion was not adopted.

The principal author of this final rule is Tom State of the Oregon State Office, assisted by the staff of the Division of Legislation and Regulatory Management, Bureau of Land Management.

This rule is consistent with the policy set out in the President's memorandum of January 28, 1992, and will relieve an unnecessary burden of the timber industry in the West. This rule will help to maintain a healthy forest products industry which can provide jobs to the people in timber dependent communities of the West.

It is hereby determined that this final rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The BLM has determined that this final rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, and that the rule would not significantly affect the 10 criteria for exceptions listed in 516 DM 2, Appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

The Department of the Interior has determined under Executive Order 12291 that this document is not a major rule. A major rule is any regulation that is likely to result in an annual effect on the economy of \$100 million or more, a major increase in costs or prices for consumers, individual industries,

Federal, State, or local government agencies, or geographic regions, or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The total economic effects of this rule have not been quantified, but are believed to be minimal, well below \$100 million annually. By deferring some periodic payments, the Government would lose some interest on that money, but the amount would not be significant because there would not be many contracts affected by this rule. Costs to the Government would be offset by the benefit to the industry occasioned by relieving timber-sale purchasers of unnecessary financial hardship when they are delayed in performing their contract obligations due to circumstances beyond their control. This rule would make timber-sale purchasers affected more competitive and possibly prevent failure of some companies by easing such hardship. Further, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the rule will not have a significant economic impact on a substantial number of small entities. The number of individuals or companies affected by the rule is expected to be low, and the economic effects are expected to be positive because the rule would reduce financial burden and improve cash flow status. Smaller companies with limited capital, who might have been prevented from participating in other contracts during extended delays under the previous regulations, will particularly benefit from the present rule.

The Department certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights. The rule would not authorize the taking of any property, and would not interfere with any contractual or other property rights. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

The Department has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

List of Subjects**43 CFR Part 5400**

Administrative practice and procedure, Forest and forest products, Public lands, Reporting and recordkeeping requirements.

43 CFR Part 5460

Forests and forest products, Government contracts, Public lands.

43 CFR Part 5470

Forests and forest products, Government contracts, Public lands.

For the reasons stated above, and under the authorities cited below, parts 5400, 5460, and 5470 of group 5400, subchapter E, chapter II of the Code of Federal Regulations are amended as set forth below:

PART 5400—[AMENDED]

1. The authority citation for part 5400 continues to read:

Authority: 61 Stat. 681, as amended; 69 Stat. 367; 48 Stat. 1269, sec. 11; 30 Stat. 414, as amended; sec. 5, 50 Stat. 875; 30 U.S.C. 601 *et seq.*; 43 U.S.C. 315, 1181a; 16 U.S.C. 607a; 43 U.S.C. 1701 *et seq.*

2. Section 5400.0-5 is amended by adding the following definitions in alphabetical order, to read as follows:

§ 5400.0-5 Definitions.

* * *

Operating season means the time of the year in which operations of the type required to complete the contract are normally conducted in the location encompassing the subject timber sale, or the time of the year specified in the timber sale contract when such operations are permitted.

Operating time means a period of time during the operating season.

* * *

PART 5460—[AMENDED]

3. The authority citation for part 5460 continues to read:

Authority: Sec. 5, 50 Stat. 875; 61 Stat. 681, as amended; 69 Stat. 367; 43 U.S.C. 1181e; 30 U.S.C. 601 *et seq.*

4. Section 5461.2 is amended by removing the introductory paragraph and revising paragraph (a) to read as follows:

§ 5461.2 Required payment schedule.

(a)(1) For sales of less than \$500,000, installment payments shall not be less than 10 percent of the total purchase price. For sales of \$500,000 or more, installment payments shall be \$50,000.

(2) The first installment shall be paid prior to or at the time the authorized

officer signs the contract. A purchaser cannot apply any portion of the first installment to cover other payments due on the contract until either 60 percent of the total purchase price has been paid or road construction required by the contract, the value of which when combined with contract payments is equal to 60 percent of the total purchase price, has been completed. When either of these 60-percent levels has been reached, one-half of the first installment may be applied to other payments due on the contract.

(3) Notwithstanding the provisions of paragraph (a)(2) of this section, when the contracting officer suspends or requests the purchaser to interrupt or delay operations during the operating season for a reason beyond the control of the purchaser, the contracting officer may reduce the amount of the first installment to 5 percent of the installment amount listed in the timber sale contract. Reductions may be made when the suspension, interruption, or delay can reasonably be expected to last longer than 30 days or has been in effect for more than 30 days for existing contracts. The purchaser shall request such reduction in writing from the contracting officer. The contracting officer will answer such requests within 15 days. The funds released may be refunded or credited to other contracts. When the contracting officer notifies the purchaser that operations may proceed, the purchaser shall have 15 days after such notification to return the first installment to the full amount specified in the timber sale contract. Failure to pay the full first installment amount within the specified time will be considered a material breach of contract, and the contracting officer may cancel the contract. No timber may be cut or removed from the contract area until the first installment is restored to the full amount required by the contract.

(4) The second installment shall be paid prior to the cutting or removal of the material sold. Each subsequent installment shall be due and payable without notice when the value of material cut or removed equals the sum of all payments made up to that point, not including the first installment, or one-half of the first installment after the other one-half of the first installment has been released as provided in paragraph (a)(2) of this section.

(5) Timber sale contracts shall contain provisions requiring periodic payments for all sales with a contract term of 19 months or longer. For sales with a contract term of 19–26 months, one periodic payment of 20 percent of the total purchase price will be required. For all sales with a contract term of 27

months or longer, two periodic payments will be required. The first payment shall be 20 percent of the total purchase price and the second payment shall be 40 percent of the total purchase price. The value of satisfactorily completed road construction required by the contract and all completed contract payments may be used as a credit against the amount due for periodic payments. The due dates for the periodic payments will be specified in the timber sale contract. Adjustment of the periodic payment dates in the contract may be made when the contracting officer suspends, interrupts, or delays operations during the operating season prior to the due date for a periodic payment for a reason beyond the control of the purchaser. The adjustment may be made when the suspension, interruption, or delay can reasonably be expected to last longer than 30 days or has been in effect for more than 30 days for existing contracts. The purchaser shall request such adjustment in writing from the contracting officer. The contracting officer will answer such requests within 15 days.

(6) For the purpose of this section, the value of satisfactorily completed road construction shall be based on the Bureau of Land Management's appraisal allowance. Satisfactory completion of portions of the required road construction, to reasonable points that can be easily identified in the road construction appraisal, shall be considered as completed road construction for purposes of this section.

PART 5470—[AMENDED]

5. The authority citation for part 5470 continues to read:

Authority: 30 U.S.C. 601 *et seq.*; 43 U.S.C. 1181e.

§ 5473.4 Approval of request.

6. Section 5473.4 is amended by removing paragraph (d) and by redesignating paragraph (e) as paragraph (d).

Dated: December 3, 1992.

Daniel Talbot,

Deputy Assistant Secretary of the Interior.

[FR Doc. 92-31540 Filed 12-29-92; 8:45 am]

BILLING CODE 4310-04-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 921229-2329]

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: NMFS publishes this emergency interim rule to close the commercial fishery for red snapper in the Gulf of Mexico from December 30, 1992, through February 15, 1993, with provisions for an alternate opening date. The intended effect of this rule is to respond to social and economic emergencies in the overfished red snapper fishery.

EFFECTIVE DATES: The closure is effective on December 30, 1992, through February 15, 1993. The amendments to part 641 are effective December 30, 1992, through March 30, 1993.

ADDRESSES: Copies of documents supporting this action may be obtained from Robert A. Sadler, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Robert A. Sadler, 813-893-3161.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council) and its implementing regulations at 50 CFR part 641, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Recent stock assessments indicate that the red snapper resources is severely overfished. The 1992 commercial quota of red snapper of 2.04 million pounds (0.93 million kg) was taken in just 53 days. Contributing factors to early closure of the red snapper fishery included (1) a significant increase in fishing pressure; and (2) an enhanced availability of red snapper, brought about at least in part by the preceding 4-month closure in 1991 and by recruitment of a good 1989 year class to the fishery. The short season for red snapper in 1992 created severe social and economic disruption of the industry. That disruption will be repeated in 1993 unless emergency action is taken.

The Council and NMFS have concluded that the present situation qualifies as an emergency because:

(1) It results from recent, unforeseen events or recently discovered circumstances. Although the economic hardships of a short red snapper season have been known since early 1992, full analysis and appropriate corrective action could not be initiated until the 1992 red snapper stock assessment was completed. The stock assessment was made available to the Council at its September 1992 meeting and it made initial recommendations at that meeting. Because of concerns as to fairness of its recommendations, the council heard public testimony and reviewed data analysis on the issue and resubmitted its recommendations at its November 1992 meeting.

(2) The situation presents serious management problems in the fishery. A significant increase in the number of vessels with reef fish permits (1,762 in 1991 versus 2,200 in 1992) and expected large aggregations of red snapper when the season would open in the absence of this emergency interim rule would exacerbate the "derby" fishery, market glut, and low prices that existed in 1992.

(3) It can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. It is estimated that, without the closure contained in this rule and other action yet to be initiated, the commercial quota of red snapper of 3.06 million pounds (1.39 million kg) would be harvested in a season lasting approximately 64 days with similar or worse economic hardships as existed in 1992.

To address this economic emergency, the Council requested that vessel trip limits be established for red snapper of 2,000 pounds (907 kg) for a vessel that has a red snapper endorsement on its reef fish permit and 200 pounds (91 kg) for a permitted vessel without such endorsement; and that the commercial fishery for red snapper be closed through February 15, 1993.

The Council also initiated action under the FMP's framework procedure for the adjustment of management measures to adjust the target date for achieving restoration of the red snapper resource and to increase the total allowable catch and commercial and recreational quotas for red snapper. (See 57 FR 57129, December 3, 1992.) Accordingly, the commercial quota for red snapper during 1993 is proposed to

be 3.06 million pounds (1.39 million kg).

The Council's proposed trip limits are controversial. Catch data have recently been updated and are being analyzed by NMFS to clarify the appropriateness of the Council's requested trip limits. Rulemaking and administrative procedures to implement the Council's proposed trip limits, or some modification thereof, cannot be completed before January 1, 1993. Accordingly, this emergency interim rule implements only the Council's request for closure of the red snapper fishery. A subsequent emergency rule is expected to deal with trip limits for red snapper when the fishery opens. Because of uncertainty as to when the rulemaking and administrative procedures to implement trip limits can be completed, this emergency interim rule provides that, with the concurrence of the Council, an alternate ending date for the closure of the commercial fishery for red snapper may be implemented by notice in the *Federal Register*.

The Council and NMFS have determined that closure of the red snapper fishery through February 15, 1993, or such alternate date as may be mutually agreed upon by NMFS and the Council, is in the best interests of the reef fish fishery. The substantial negative impacts under the current regulations justify emergency action to implement this change as soon as possible. Accordingly, NMFS publishes this emergency interim rule, effective from December 30, 1992, through March 30, 1993, as authorized by section 305 (c)(2)(b) and (c)(3) of the Magnuson Act.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

This emergency interim rule is exempt from the normal review procedures of E.O. 12291 as provided in section 8(a)(1) of that order. It is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the procedures of that order.

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for public comment.

The Assistant Administrator prepared an environmental assessment (EA) for this action, which concludes that there will be no significant impact on the human environment. A copy of the EA is available (See ADDRESSES).

The Assistant Administrator determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management programs of Alabama, Florida, Louisiana, and Mississippi. Texas does not participate in the coastal zone management program. These determinations have been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

This emergency interim rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule does not contain regulatory provisions with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

The Assistant Administrator for good cause under section 553(b)(B) of the Administrative Procedure Act (APA) finds that the need to relieve an economic hardship makes it impracticable and contrary to the public interest to provide prior notice and opportunity for public comment on this rule. Similarly, to implement measures to relieve the economic hardship in a timely manner, the Assistant Administrator finds for good cause under section 553(d)(3) of the APA that the effective date of this rule should not be delayed.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 24, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 641 is amended as follows:

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 641 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 641.7 is amended, by adding paragraph (u), effective from December 30, 1992, through March 30, 1993, to read as follows:

§ 641.7 Prohibitions.

* * * * *

(u) Exceed the bag and possession limits for red snapper or purchase, barter, trade, or sell red snapper during the closure of the commercial fishery for red snapper, as specified in § 641.30.

3. A new § 641.30 is added, effective from December 30, 1992, through March 30, 1993, to read as follows:

§ 641.30 Closure of the commercial fishery for red snapper.

(a) Other provisions of this part 641 notwithstanding, the commercial fishery for red snapper is closed from December 30, 1992, through February 15, 1993, except that, with the concurrence of the Gulf of Mexico Fishery Management Council, the Regional Director may revise the ending date of the closure by publication of a notice in the *Federal Register*.

(b) During this closure of the commercial fishery, the bag and possession limits, as specified in § 641.24(b)(1) and (c), and the prohibition of purchase, barter, trade, or sale of red snapper taken under the bag limit, as specified in § 641.24(g), apply to red snapper harvested from or possessed in the EEZ.

[FR Doc. 92-31680 Filed 12-24-92; 11:06 am]

BILLING CODE 3510-22-M

50 CFR Part 641

[Docket No. 921235-2335]

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule.

SUMMARY: NMFS publishes this emergency interim rule to establish vessel trip limits for red snapper of 2,000 pounds (907 kg) for a vessel that has a red snapper endorsement on its reef fish permit and 200 pounds (91 kg) for a permitted vessel without such endorsement. A red snapper endorsement may be obtained based on documented vessel landings of 5,000 pounds (2,268 kg) per year during two of the years 1990, 1991, and 1992. The intended effect of this rule is to respond to social and economic emergencies without jeopardizing the long-term rebuilding program for the overfished red snapper resource.

EFFECTIVE DATES: December 30, 1992, through March 30, 1993.

ADDRESSES: Copies of documents supporting this action may be obtained from Robert A. Sadler, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Robert A. Sadler, 813-893-3161.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is

managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) prepared by the Gulf of Mexico Fishery Management Council (Council) and its implementing regulations at 50 CFR part 641, under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Recent stock assessments indicate that red snapper resource is severely overfished. The 1992 commercial quota of red snapper of 2.04 million pounds (0.93 million kg) was taken in just 53 days. Contributing factors to early closure of the red snapper fishery included (1) a significant increase in fishing pressure; and (2) an enhanced availability of red snapper, brought about at least in part by the preceding 4-month closure in 1991 and by recruitment of a good 1989 year class to the fishery. The short season for red snapper in 1992 created severe social and economic disruption of the industry. That disruption will be repeated in 1993 unless emergency action is taken.

The Council and NMFS have concluded that the present situation qualifies as an emergency as follows:

(1) It results from recent, unforeseen events or recently discovered circumstances. Although the economic hardships of a short red snapper season have been known since early 1992, full analysis and appropriate corrective action could not be initiated until the 1992 red snapper stock assessment was completed. The stock assessment was made available to the Council at its September 1992 meeting and the Council made initial recommendations at that meeting. Because of concerns as to fairness of its recommendations, the Council heard public testimony and reviewed data analysis on the issue and reconsidered and subsequently endorsed the recommendations made at its November 1992 meeting.

(2) It presents serious management problems in the fishery. A significant increase in vessels with reef fish permits (1,762 in 1991 versus 2,200 in 1992) and expected large aggregations of red snapper when the season opens in the absence of this emergency interim rule would exacerbate the "derby" fishery, market glut, and low prices that existed in 1992.

(3) It can be addressed through emergency regulations for which the immediate benefits outweigh the value of advance notice, public comment, and deliberative consideration of the impacts on participants to the same extent as would be expected under the normal rulemaking process. It is estimated that, without the trip limits

contained in this rule, the commercial quota of red snapper of 3.06 million pounds (1.39 million kg) would be harvested in a season lasting approximately 64 days with similar or worse economic hardships as existed in 1992. This emergency rule will extend the season for red snapper to over 100 days (estimates range from 105 to 197 days), contribute to increased ex-vessel prices, allow all permitted vessels some share of the available commercial quota, and reserve a significant share of the available quota for those fishermen who have had an historical dependence on red snapper. In addition, individuals and organizations of the fishing industry have contributed significantly to the Council's development of a long-term limited access program, in general, and to the formulation of the interim measures contained in this rule.

To address this economic emergency, the Council has requested that vessel trip limits be established for red snapper of 2,000 pounds (907 kg) for a vessel that has a red snapper endorsement on its reef fish permit and 200 pounds (91 kg) for a permitted vessel without such endorsement; and that the commercial fishery for red snapper be closed through February 15, 1993, except that the Director, Southeast Region, NMFS, (Regional Director) may open the commercial fishery earlier if he finds that the red snapper endorsements can be fully implemented prior to February 15.

The Council also initiated action under the FMP's framework procedure for the adjustment of management measures to adjust the target date for achieving restoration of the red snapper resource and to increase the total allowable catch and commercial and recreational quotas for red snapper (see 57 FR 57129, December 3, 1992). Accordingly, the commercial quota for red snapper during 1993 is proposed to be 3.06 million pounds (1.39 million kg).

By separate action, NMFS has issued an emergency interim rule to delay the opening of the commercial fishery for red snapper until February 16, 1993, with provisions for an alternate opening date (see emergency interim rule published elsewhere in this issue of the *Federal Register*).

Red snapper endorsements will be issued to currently permitted vessels based on documented historical red snapper landings of 5,000 pounds (2,268 kg), whole weight, or 4,505 pounds (2,043 kg), eviscerated weight, per year in two of the years 1990, 1991, and 1992. Catch history of red snapper is applied through a vessel's documented historical landings to the person (owner

or operator) whose earned income qualified for the vessel permit at the time of the landings. The catch history of a vessel, the permit for which was based on the owner's having met the earned income requirement, accrues to that owner, and a red snapper endorsement will be issued for his or her currently permitted vessel. The catch history of a vessel, the permit for which was based on the operator's having met the earned income requirement, accrues to that operator and a red snapper endorsement will be issued for the currently permitted vessel operated by him or her. Specific instructions and eligibility requirements are included with an application that was mailed by the Council to owners/operators of currently permitted vessels in the reef fish fishery.

Submission of the application constitutes a collection of information subject to approval under the Paperwork Reduction Act (PRA). Primarily because of the PRA's requirements for review and approval of a proposed collection of information, applications could not be mailed before December. Sufficient time for applicants to collect landings data and submit applications, for the review committee to determine eligible applicants, and for the oversight committee to consider appeals necessitates a lengthy period for the issuance of endorsements. Because of uncertainty as to when the administrative procedures to implement trip limits can be completed, modification of the scheduled February 15 ending date of the closure of the commercial fishery for red snapper may be necessary. Under the previously cited emergency interim rule, with the concurrence of the Council, an alternate ending date for the closure of the commercial fishery for red snapper may be implemented by notice in the *Federal Register*.

The intent of these emergency interim measures is to extend the commercial fishing season for red snapper, thus avoiding the derby fishery, market glut, and depressed ex-vessel prices that occurred in 1992. The Council believes that allowing those vessels with a red snapper endorsement to harvest 2,000 pounds (907 kg) of red snapper per trip will alleviate the hardship placed on fishermen who have historically been primarily dependent on red snapper for their livelihood and who have been financially affected by the declining stock abundance and the reduced commercial quotas. The Council further believes that the red snapper endorsement requirement of red snapper landings of 5,000 pounds (2,268 kg) per year in 2 of the last 3 years is

a minimal level to establish a degree of dependency by permitted vessels on red snapper. It is estimated that approximately 130 vessels will qualify for the endorsement.

The Council requested that transfers of red snapper endorsements not be allowed during the period of this emergency rule, except that the permit and endorsement may be transferred by an owner from one vessel owned by him or her to another vessel so owned. The Council believes that, since this is a one-time allocation system for 1993, it is generally inappropriate to allow transfers. The exception will allow continued participation in the red snapper commercial fishery under the endorsement in the event that an owner's vessel sinks or otherwise becomes inoperable.

The Council believes that allowing a 200-pound (91-kg) trip limit for permitted vessels that do not have red snapper endorsements (1) will prevent waste of red snapper that would die if released; (2) represents a reasonable bycatch allowance for vessels targeting other reef fish species; and (3) allows every permitted vessel a share of the commercial quota.

To ensure that the commercial closure and trip limits are not subverted, NMFS establishes in this emergency interim rule, as conditions applicable to each vessel's reef fish permit, that a permitted vessel must abide by the commercial closure provisions, may not exceed the appropriate trip limit, and may not transfer red snapper at sea from one vessel to another, without regard to where such red snapper are harvested or possessed. An owner of a permitted vessel who does not accept these conditions must return his or her vessel's permit to the Regional Director. Under the terms of the current moratorium on new permits in the reef fish fishery, such permits will not be replaced.

The Council and NMFS have determined that the vessel trip limits are in the best interests of the reef fish fishery. The substantial negative impacts under the current regulations justify emergency action to implement these changes as soon as possible. Accordingly, NMFS publishes this emergency interim rule, effective from December 30, 1992, through March 30, 1993, as authorized by section 305 (c)(2)(B) and (c)(3) of the Magnuson Act. By agreement of NMFS and the Council, this emergency interim rule may be extended for an additional period of not more than 90 days. During this rule's period of effectiveness, the Council and NMFS intend to complete regulatory action that would extend the

effectiveness of the measures in this emergency interim rule for the remainder of 1993. In addition, the Council is expected to continue its development of a more comprehensive effort limitation system for the red snapper component of the reef fish fishery.

Classification

The Assistant Administrator for Fisheries, NOAA (Assistant Administrator), has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

This emergency interim rule is exempt from the normal review procedures of E.O. 12291 as provided in section 8(a)(1) of that order. It is being reported to the Director of the Office of Management and Budget with an explanation of why it is not possible to follow the procedures of that order.

This rule is exempt from the procedures of the Regulatory Flexibility Act because the rule is issued without opportunity for public comment.

The Assistant Administrator prepared an environmental assessment (EA) for this action, which concludes that there will be no significant impact on the human environment. A copy of the EA is available (see ADDRESSES).

The Assistant Administrator determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management programs of Alabama, Florida, Louisiana, and Mississippi. Texas does not participate in the coastal zone management program. These determinations have been submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act.

This emergency interim rule is related to a new, one-time collection-of-information requirement subject to the PRA, namely, applications for red snapper endorsements on vessel permits for reef fish. That collection has been approved by the Office of Management and Budget under control number 0648-0270.

A federalism assessment was prepared that concludes that implementation of this emergency interim rule is consistent with the

principles, criteria, and requirements of E.O. 12612.

The Assistant Administrator, for good cause under section 553(b)(B) of the Administrative Procedure Act (APA), finds that the need to relieve social and economic hardship makes it impracticable and contrary to the public interest to provide prior notice and opportunity for public comment on this rule. Similarly, to implement measures to relieve the economic hardship in a timely manner, the Assistant Administrator finds for good cause under section 553(d)(3) of the APA that the effective date of this rule should not be delayed.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 24, 1992.

William W. Fox, Jr.,

Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 641 is amended as follows:

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 641 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. Section 641.4 is amended by adding paragraphs (m) and (n), effective from December 30, 1992, through March 30, 1993, to read as follows:

§ 641.4 Permits and fees.

(m) *Red snapper endorsement.* (1) As a prerequisite for exemption from the trip limit for red snapper specified in § 641.21(d)(1), a vessel for which a reef fish permit has been issued under this section must have a red snapper endorsement on such permit.

(2) A red snapper endorsement is invalid upon sale of the vessel; however, an owner may transfer an endorsement to another vessel owned by him or her in accordance with the permit transfer provisions specified in § 641.4(l)(2).

(n) *Condition of a permit.* As a condition of a reef fish permit issued under this section, without regard to where red snapper are harvested or possessed, a permitted vessel—

(1) Must abide by the red snapper closure provisions of § 641.30;

(2) May not exceed the appropriate vessel trip limit for red snapper, as specified in § 641.21 (d)(1) or (d)(2); and

(3) May not transfer a red snapper at sea, as specified in § 641.21(d)(3).

3. Section 641.7 is amended by adding paragraphs (v) and (w), effective from December 30, 1992, through March 30, 1993, to read as follows:

§ 641.7 Prohibitions.

(v) Exceed the vessel trip limits for red snapper, as specified in § 641.21 (d)(1) and (d)(2).

(w) Transfer a red snapper at sea, as specified in § 641.21(d)(3).

4. Section 641.21 is amended by adding paragraph (d), effective from December 30, 1992, through March 30, 1993, to read as follows:

§ 641.21 Harvest limitations.

(d) *Red snapper trip and transfer limitations.* (1) Except as provided in paragraph (d)(2) of this section, a vessel for which a reef fish permit has been issued under § 641.4 may not possess on any trip red snapper in excess of 200 pounds (91 kg), whole or eviscerated.

(2) A vessel for which a red snapper endorsement has been issued under § 641.4(m) may not possess on any trip red snapper in excess of 2,000 pounds (907 kg), whole or eviscerated weight.

(3) A red snapper may not be transferred at sea from one vessel to another.

5. Section 641.30 is amended by suspending paragraph (b) and adding paragraph (c), effective from December 30, 1992, through March 30, 1993, to read as follows:

§ 641.30 Closure of the commercial fishery for red snapper.

(c) During this closure of the commercial fishery, the bag and possession limits, as specified in § 641.24 (b)(1) and (c), and the prohibition of purchase, barter, trade, or sale of red snapper taken under the bag limit, as specified in § 641.24(g), apply to red snapper harvested from or possessed in the EEZ and to each vessel for which a currently valid reef fish permit has been issued under § 641.4.

[FR Doc. 92-31679 Filed 12-24-92; 11:06 am]

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Proposed Rules

Federal Register

Vol. 57, No. 251

Wednesday, December 30, 1992

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV-92-084PR]

Extension of Date for Disposition of Undersized Prunes Produced in California

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule would relax handling requirements by extending the deadline for handlers to find additional non-human consumption outlets to market their undersized prune inventories. The Prune Marketing Committee (Committee) unanimously recommended extending the date for disposing of undersized prunes by up to 60 days in those crop years when there are excessive undersized supplies and limited inedible market demand for such prunes. The proposal could assist handlers with undersize prune inventories in disposing such inventories to non-human consumption outlets.

DATES: Comments which are received by January 14, 1993, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administration Branch, F&V, AMS, USDA, room 2523-S, P.O. Box 96456, Washington, DC 20090-6456. Comments should reference the docket number and the date and the page number of this issue of the Federal Register and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Richard Van Diest, California Marketing Field Office, 2202 Monterey Street,

Suite 102B, Fresno, California 93721; telephone (209) 487-5901; or Valerie L. Emmer, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456; telephone (202) 205-2829.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under marketing agreement and Order No. 993 (7 CFR part 993), both as amended, hereinafter referred to as the order, regulating prunes produced in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

The Department of Agriculture (Department) is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome, and are easy for the public to understand, use or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations. This principle is articulated in President Bush's January 28, 1992, memorandum to agency heads, and in Executive Orders 12291 and 12498. The Department applies this principle to the fullest extent possible, consistent with law.

The Department has developed and reviewed this regulatory proposal in accordance with these principles. Nonetheless, the Department believes that public input from all interested persons can be invaluable to ensuring that the final regulatory product is minimally burdensome and maximally efficient. Therefore, the Department specifically seeks comments and suggestions from the public regarding any less burdensome or more efficient alternative that would accomplish the purposes described in the proposal. Comments suggesting less burdensome or more efficient alternatives should be addressed to the agency as provided in this proposed rule.

This rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512-1 and the criteria contained in Executive

Order 12291 and has been determined to be a non-major rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, the deadline for the disposition of undersized prunes is July 31 of the same crop year in which the obligation is incurred. This action would extend by up to 60 days the date for disposition of undersized prunes. This proposed rule would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 17 handlers of dried prunes who are subject to regulation under the order and approximately 1,400 producers in the regulated area. Small agricultural

service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$3,500,000, and small agricultural producers are defined as those whose annual receipts are less than \$500,000. The majority of handlers and producers of dried prunes may be classified as small entities.

Section 993.150(g)(1) requires that undersized prunes accumulated by a handler, pursuant to § 993.49(c), shall be disposed of in non-human consumption outlets during the crop year in which such prunes were received from producers and dehydrators. The crop year runs from August 1 through July 31. Non-human outlets include livestock feeders and manufacturers of inedible syrup, industrial alcohol, animal feed or other products intended for non-human use.

During most crop years, handlers have little difficulty in disposing of undersized prunes by the July 31 disposition deadline, most of which are sold to feed lots for use as cattle feed. However, there may be other less expensive products available to feed lot operators, and purchases of undersized prunes may be curtailed. During the 1991-92 crop year (August 1, 1991, through July 31, 1992), prune handlers had excessive supplies of undersized prunes for which there was a limited demand. Fortunately, all prune handlers found outlets for their undersized prunes by July 31.

Recognizing that feed lot operators may be able to purchase less expensive feed alternatives and that prune handlers may not be able to dispose of their undersized prune inventories by the July 31 deadline, the Committee, at its June 23, 1992, meeting recommended that the disposition deadline for such prunes be extended by up to 60 days beyond July 31. At its November 12, 1992, meeting, the Committee unanimously recommended modifying its original recommendation to include criteria for granting such an exemption. This proposed change would provide handlers additional time to dispose of the undersized prune inventories to non-human consumption outlets.

Under this proposed action, individual handlers needing an extension would be required to notify the Committee in writing no later than July 1—30 days prior to the end of the crop year. The Committee would approve an extension of time provided that:

(1) The Committee's records indicate that the handler has disposed of at least 65 percent of the handler's undersized prunes by May 31, indicating a bona

fide effort by the handler to dispose of the handler's undersized prunes;

(2) Such handler has a sufficient quantity of undersized prunes held in storage to meet its remaining obligation; and

(3) The extension of time requested is not later than 60 days beyond the end of the crop year.

There is periodic contact between the handlers and the Committee regarding the disposal of undersized prunes. Paragraph (g) of § 993.150 requires a handler to file an application with the Committee to obtain approval before the handler disposes of the undersized inventory. Paragraph (g) also prescribes handler reporting requirements to the Committee to assure that undersized prune inventories are disposed of in non-human consumption channels. Through such reporting, the Committee is able to determine the quantity of undersize prunes in the handler's possession and the effort made in disposing of such prunes.

The proposed procedure would limit an extension request to not more than 60 days beyond the end of the crop year. The Committee indicated that an extension of more than 60 days could adversely impact the undersized prune market for the next year's crop. This action would provide handlers additional time for disposing their undersized prunes, without adversely impacting the market during the subsequent crop year.

Based on available information, the Administrator of the AMS has determined that the issuance of this proposed rule would not have a significant economic impact on a substantial number of small entities.

The information collection requirements contained in the regulation have been submitted to the Office of Management and Budget for approval under OMB Control Number 0581-0099.

A 15-day comment period is provided to allow interested person to respond to this proposal. All written comments received within the comment period will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 993

Marketing Agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is proposed to be amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Subpart—Administrative Rules and Regulations

2. Section 993.150(g)(1) of Subpart—Administrative Rules and Regulations (7 CFR 993.101-993.174) is revised to read as follows:

§ 993.150 Disposition of prunes by handlers.

(g) *Disposition of undersized prunes—*
(1) *Application for and approval of disposition.* Undersized prunes accumulated by a handler pursuant to § 993.49(c) shall be disposed of in non-human consumption outlets during the crop year in which the prunes establishing such obligations were received from producers or dehydrators, or such later date that a handler may request in a notice, filed with the Committee at least 30 days prior to July 31 of the year of accumulation: *Provided*, That (i) such handler has made a bona fide effort to dispose of its undersized prunes as demonstrated by the shipment of at least 65 percent of its undersized obligation by May 31; (ii) such handler has a sufficient quantity of undersized prunes held in storage to meet its remaining obligation; and (iii) the extension of time requested is not later than 60 days beyond the end of the crop year. * * *

Dated: December 21, 1992.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable Division.
[FR Doc. 92-31669 Filed 12-29-92; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 1131

[Docket No. AO-271-A32; DA-92-24]

Milk in the Central Arizona Marketing Area; Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

SUMMARY: This hearing is being held to consider proposed changes in the Central Arizona marketing order. The proposals concern the amendment of the order: (1) To include additional definitions that apply to a producer-handler; (2) To provide that any fluid milk products acquired from a producer-handler for distribution by a pool plant shall be assigned to Class III use as a receipt at the pool plant,

whether or not the milk physically was received at the pool plant for accounting purposes under the order; and (3) To remove the associated producer and associated producer milk provisions. The hearing was requested by United Dairymen of Arizona, Inc., a cooperative association of dairy farmers that supply milk for the market.

DATES: The hearing will convene at 9 a.m., February 2, 1993.

ADDRESSES: The hearing will be held at the Ramada Inn Metrocenter, 12027 North 28th Drive, Phoenix, Arizona 85029 (phone 602/866-7000).

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 720-4829.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12291.

Notice is hereby given of a public hearing to be held at the Ramada Inn Metrocenter, 12027 North 28th Drive, Phoenix, Arizona, beginning at 9 a.m., on February 2, 1993, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Central Arizona marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

The Department of the Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome and are easy for the public to understand, use or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations. This principle is articulated in President Bush's January 28, 1992,

memorandum to agency heads, and in Executive Orders 12291 and 12498. The Department applies this principle to the full extent possible, consistent with law.

In this regard, the Department believes that public input from all interested persons can be invaluable to ensuring that the final regulatory product is minimally burdensome and maximally efficient. Therefore, the Department specifically seeks comments and suggestions from the public regarding any less burdensome or more efficient alternative that would accomplish the purposes described in the proposals to be considered at the hearing.

Actions under the Federal milk order program are subject to the Regulatory Flexibility Act (Pub. L. 96-354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than \$500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small businesses.

The amendments to the rules proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with these rules.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his principal place of business, has

jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with 4 copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Part 1131

Milk marketing orders.

The authority citation for 7 CFR part 1131 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture. Proposed by The United Dairymen of Arizona: Proposal No. 1:

§ 1131.10 Producer-Handler.

Add a new paragraph (a)(2) in § 1131.10 to read as follows: Carries his entire reserve supply in his own herd's production as determined by the Market Administrator by:

(2)(i) Comparing weekly volumes sold to accounts serviced by the producer-handler and by other handlers under this or any other Federal milk order;

(ii) Determining whether the producer-handler shares a common account with any handler under this or any other Federal milk order with the same milk product in the same size container;

(iii) Determining whether the producer-handler packages milk in the same label as another handler under this or any other Federal milk order;

(iv) Determining that the producer-handler's pro rata share of Class I route dispositions in the marketing area during the flush farm production months (March, April, May) are substantially the same as during the short farm production months (July, August, September); and

(v) Receiving fluid milk from any source in excess of 5,000 pounds or five percent of its Class I sales during the month, whichever is less.

(vi) Any other method which indicates the producer-handler is not producing his own reserve supply. If the producer-handler fails to meet any of the standards set forth in paragraph (a)(2) (i) through (v) of this section, it must meet such standards for twelve ensuing contributing months to again qualify as a producer-handler.

Redesignate paragraph (a)(2) in § 1131.10 as paragraph (a)(3).

Redesignate paragraph (a)(3) in § 1131.10 as paragraph (a)(4).

§ 1131.44 General classification rules.

Revise § 1131.44(a)(7)(iv) to read as follows: Receipts of fluid milk products received or acquired for distribution from a producer-handler as defined under this or any other Federal milk order;

Proposal No. 2:

§§ 1131.21, 1131.22, and 1131.33 [Removed]

Remove §§ 1131.21, 1131.22, and 1131.33.

§§ 1131.42, 1131.61, 1131.62, 1131.72, 1131.77, and 1131.85 [Amended]

Remove language from § 1131.72(b) relating to payments to an "associated producer" and make such conforming changes to §§ 1131.42(d)(2)(vi), 1131.62(b), 1131.61(e)(2), 1131.77, and 1131.85(b), as necessary to eliminate provisions relating to an "associated producer."

Proposed by Heartland Dairy:
Proposal No. 3:

§ 1131.10 Producer-Handler.

Amend § 1131.10 by revising paragraph (a)(1)(ii) to read as follows:

(ii) Fluid milk products obtained by transfer from pool plants or other order plants in an amount not to exceed 5 percent of his total fluid milk product disposition for the month or 5,000 pounds, whichever is less, provided that during each 30 day period commencing on June 15 and continuing through October 12 of each calendar year, the foregoing limitation shall not apply and a producer-handler shall be entitled to obtain by transfer from pool plants and other sources an amount not to exceed 25 percent of his average monthly Class I milk disposition for the preceding nine month period;

Proposed by Dairy Division,
Agricultural Marketing Service Proposal No. 4:

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Marketing Administrator, W. Joe Albright, USDA-AMS-Dairy Division, Suite 230, 5501 N. 19th Avenue, Phoenix, AZ 85015, or from the Hearing Clerk, room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available

for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office only)
Office of the Market Administrator, Central Arizona Marketing Area

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: December 21, 1992.

Kenneth C. Clayton,
Acting Administrator.

[FR Doc. 92-31668 Filed 12-29-92; 8:45 am]

BILLING CODE 3410-02-M

Farmers Home Administration

7 CFR Part 1944

RIN 0575-AB36

Section 502 Rural Housing Loan Policies, Procedures and Authorizations

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its regulations to clarify that the appraisal fee will be included in the loan as an authorized loan purpose and to authorize a rural housing loan to exceed the market value of the security by the appraisal fee. The intended effect is to provide timely processing of home ownership loans for low- and very low-income families.

DATES: Comments must be received on or before March 1, 1993.

ADDRESSES: Submit written comments in duplicate to the Office of the Chief Regulations Analysis and Control Branch, Farmers Home Administration, U.S. Department of Agriculture, room 6348, South Agriculture Building, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ray McCracken, Senior Loan Specialist, Farmers Home Administration, USDA, room 5334-S, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250, Telephone (202) 720-1474.

SUPPLEMENTARY INFORMATION:

Classification

This proposed action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined to be nonmajor because there is no substantial change from practices under existing rules that would have an annual effect on the economy of \$100 million or more. There is no major increase in cost or prices for consumers; individual industries, Federal, State, or local government agencies; or geographical regions. Furthermore, there are no significant adverse effects on competition, employment, productivity, innovation, or in the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Discussion

Prudent lending practices dictate that appraisers should produce an objective opinion about the market value of a property. This objectivity may be compromised if the appraiser is involved in deciding to extend credit that is secured by such property. Under Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, it is intended that appraisals conform to the Uniform Standards of Professional Appraisal Practice (USPAP) as promulgated by the Appraisal Standards Board of the Appraisal Foundation. These appraisal standards will be mandatory December 31, 1992. The Executive Office of The President, Office of Management and Budget (OMB), directed credit Agencies through OMB Circular A-129 to comply with USPAP. Under the Conduct Section of the Ethics Provision of USPAP, the appraiser must perform appraisal assignments with objectivity, independence, and without accommodation of personal interests.

In order for FmHA to institute an appraisal process that institutes prudent lending practices and complies with the conduct provisions of USPAP, it must separate the duties of the appraiser and loan approval official. FmHA has instituted an appraisal process that does this and it is in the public interest that this process continues to ensure that the security value of a property is

determined independent of the applicant's eligibility to purchase the property. However, the Agency can not continue this process without additional resources. By instituting a fee for appraisal services that will be included in the loan, FmHA will receive the resources to continue its appraisal process and be in compliance with the conduct provision of USPAP by December 31, 1992. To minimize the impact on the public of an appraisal fee, the Agency has authorized the loan to exceed the security value by the amount of the appraisal fee.

Section 510 of the Housing Act of 1949 requires that fee appraisers be used in any county or district office where loan applications can not be expeditiously processed and to include the cost of the appraisal services in the loan or grant. By including the fee in the loan, when necessary, and amortizing the loan over 33 to 38 years the borrower's payment for this cost will be negligible and repayment ability should not be affected.

Regulatory Flexibility Act

La Verne Ausman, Administrator of Farmers Home Administration, has determined that this action will not have a significant economic impact on a substantial number of small entities because the regulatory changes affect FmHA processing of Section 502 loans and individual applicant eligibility for the program.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this proposed action does not constitute a major Federal Action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91-190, an Environmental Impact Statement is not required.

Civil Justice Reform

This document has been reviewed in accordance with Executive Order (EO) 12778. It is the determination of FmHA that this action does not unduly burden the Federal Court Systems in that it meets all applicable standards provided in Section 2 of the EO.

Programs Affected

This program is listed in the Catalog of Federal Domestic Assistance under 10.410, Low-Income Housing Loans.

Intergovernmental Consultation

For the reason set forth in the final rule and related Notice to 7 CFR part 3015, subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Reform: Less Burdensome or More Efficient Alternatives

The Department of Agriculture is committed to carrying out its statutory and regulatory mandates in a manner that best serves the public interest. Therefore, where legal discretion permits, the Department actively seeks to promulgate regulations that promote economic growth, create jobs, are minimally burdensome and are easy for the public to understand, use or comply with. In short, the Department is committed to issuing regulations that maximize net benefits to society and minimize costs imposed by those regulations. This principle is articulated in President Bush's January 28, 1992, memorandum to agency heads, and in Executive Orders 12291 and 12498. The Department applies this principle to the full extent possible, consistent with law.

The Department has developed and reviewed this regulatory proposal in accordance with these principles. Nonetheless, the Department believes that public input from all interested persons can be invaluable to ensuring that the final regulatory product is minimally burdensome and maximally efficient. Therefore, the Department specifically seeks comments and suggestions from the public regarding any less burdensome or more efficient alternative that would accomplish the purposes described in the proposal. Comments suggesting less burdensome or more efficient alternatives should be addressed to the agency as provided in this Notice.

List of Subjects in 7 CFR Part 1944

Home improvement, Loan programs—Housing and community development, Low and moderate income housing—Rental, Mobile homes, Mortgages, Rural housing, Subsidies.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is proposed to be amended as follows:

PART 1944—HOUSING

1. The authority citation for part 1944 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 7 CFR 2.70.

Subpart A—Section 502 Rural Housing Loan Policies, Procedures, and Authorizations

2. Section 1944.3 is amended by revising paragraphs (b)(9) and (b)(14) to read as follows:

§ 1944.3 Loan purposes.

(b) * * *

(9) Pay incidental expenses such as fees for tax monitoring service, legal, title clearance, loan closing, architectural, appraisal, surveying, environmental, and other technical services and incidental expenses authorized in Exhibit F of this subpart.

(14) Provide living area for all members of the applicant's household, including "extended family" as provided in § 1944.16(b).

3. Section 1944.17 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 1944.17 Maximum loan amounts.

(a) An RH loan to buy or build a dwelling may be made up to the market value of the security plus an appraisal fee less the unpaid principal balance and past-due interest of any other liens against the security property for:

Dated: November 9, 1992.

La Verne Ausman,
Administrator, Farmers Home
Administration.

[FR Doc. 92-31673 Filed 12-29-92; 8:45 am]
BILLING CODE 3410-07-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 1

Contemporaneous Written Records of Orders Placed With Contract Market Members by Other Members Present on the Floor

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed Rule Amendment.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is proposing amendments to Commission Regulation 1.35 which would implement the statutory directive set forth in Section 203 of the Futures Trading Practices Act of 1992 ("Futures Trading Act") by requiring that "a contemporaneous written record be made, as practicable, of all orders for execution on floor or subject to the rules of each contract market placed by a member of the contract market who is

present on the floor at the time such order is placed."¹ The amendments generally would require that orders placed with a contract market member by another member present on the floor ("CTI-3 orders"),² be recorded on order tickets in the same manner as is currently required for customer orders, or, alternatively, by both the member initiating a CTI-3 order and the member receiving such order for execution recording certain information on their trading cards or other records reflecting the placement of the order and its execution, respectively. The Commission also is proposing to exempt certain CTI-3 spread transactions from the contemporaneous written record requirement.

DATES: Comments on the proposed amendments to Regulation 1.35 must be received on or before January 29, 1993.

ADDRESSES: Comments on the proposed rule amendments should be sent to: Community Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, Attention: Secretariat.

FOR FURTHER INFORMATION CONTACT: Lloyd F. Bernard, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone (202) 254-8955.

SUPPLEMENTARY INFORMATION:

I. Introduction

On February 7, 1989, in response to concerns raised by the joint Department of Justice and Commission investigation into trade practice abuses at the Chicago exchanges, the Commission's Division of Trading and Markets ("Division") requested by letter that all exchanges examine a variety of trade practice issues for possible improvements in relevant self-regulatory controls.³ Included among these issues was the exchanges' requirements for handling and generating an audit trail for orders received from other members present on the floor, also known as "oral orders" or "customer type indicator (CTI)-3

orders." These orders are transmitted verbally or are handsignalled to contract market members from other members present on the floor, may be for the account of the member placing the order or for an account under his control, and are not recorded pre-execution on written records. Based on the Commission's dialogue with the exchanges, the Commission ultimately recommended to the Senate Committee on Agriculture, Nutrition and Forestry ("Committee") that CTI-3 orders be addressed in the Commission's reauthorization legislation.⁴ Congress responded favorably in enacting section 203 of the Futures Trading Act, which directs the Commission to promulgate regulations governing oral orders as described in the Commission's proposals and in detail below.

Commission Regulation 1.35(a)(2) requires that a written record (order ticket) be prepared by a contract market member who receives a customer or option customer's order on the floor other than in the form of a written record.⁵ However, Regulation 1.35(a)(3) exempts CTI-3 orders from this requirement provided that the member receiving and executing the order notes,

⁴ On March 9, 1989, the Honorable Patrick J. Leahy, Chairman of the Committee, asked the Commission to comment on various proposals designed to tighten oversight of floor trading. One of these proposals pertained to the treatment of oral orders on the floor. In response to the Senator's proposal, the Commission, by letter dated April 25, 1989, recommended that the Commission undertake rulemaking amending Commission Regulation 1.35 as it pertains to oral orders to improve monitoring or to limit such orders.

On January 14, 1991, Senator Leahy introduced the Commission's reauthorization legislation S. 207 which, among other things, incorporated the Commission's proposals regarding oral orders. 137 Cong. Rec. S905 (daily ed. Jan. 14, 1991). The legislation provided that "(t)he Commission shall adopt rules requiring that a contemporaneous written record be made, as practicable, of all orders for execution on the floor or subject to the rules of each contract market placed by a member of the contract market who is present on the floor at the time such order is placed." S. Rep. No. 22, 102d Cong., 1st Sess. 88 (1991). The Committee reported favorably on the legislation on March 12, 1991, stating that the provision was intended to require that a contemporaneous written record be made for all "member-for-member orders" for execution on the floor. *Id.* at 14. The legislation passed through conference without change to the language regarding oral orders. 138 Cong. Rec. H10915, H10918 (daily ed. Oct. 2, 1992).

⁵ Under Commission Regulation 1.35(a)(2), a member receiving a customer order which is not in the form of a written record including account identification, order number and the date and time to the nearest minute, such order was transmitted or received on the floor of such contract market, shall immediately upon receipt of the order prepare a written record of such order in non-erasable ink, including the account identification and order number and shall record on the order by time-stamp or other timing device, the date and time to the nearest minute that the order is received on the floor.

in addition to essential execution information (e.g., contract, quantity and price), the time of execution on his trading card or other record immediately upon execution of the order. The absence of the pre-execution written record requirement for CTI-3 orders enables a member trading in one pit to have a trade executed for himself, or for an account over which he has control, in another pit, without physically leaving the area in which he is trading.

In reviewing exchange audit trail systems, the Division had found an unacceptable level of compliance with the requirement that the execution time for CTI-3 orders be recorded by the member executing the order. Where a member executing a CTI-3 order fails to record the time, there would be no timing data, other than the bracket, to reflect either order entry or execution. Without such audit trail data, the potential exists, for example, that CTI-3 orders may be executed ahead of time-stamped customer orders. Thus, the proposed amendments are intended to increase minimum recordkeeping standards for CTI-3 orders. The resulting data would assist exchange compliance staffs and the Commission in monitoring CTI-3 orders for their use in potential trading violations.

Since October 1989, the Division has maintained a dialogue with the exchanges to encourage their voluntary implementation of enhanced audit trail rules governing CTI-3 orders. The Division did so based on the need to address identified self-regulatory deficiencies and the expectation of new statutory requirements. In response to the urging of the Division, almost all of the exchanges voluntarily have implemented such rules.⁶

II. Overview of Proposed Amendments

A. Contemporaneous Written Records

Section 203 of the Futures Trading Act requires that the Commission issue

⁶ See, Amex Commodities Corporation ("ACC") Rule 621, Chicago Board of Trade ("CBT") and MidAmerica Commodity Exchange ("MIDAM") Rules 332.09, Chicago Mercantile Exchange ("CME") Rule 536, Coffee, Sugar & Cocoa Exchange, Inc. ("CSCC") Rule 1.12(c)(1), Commodity Exchange, Inc. ("COMEX") Rule 4.81, Kansas City Board of Trade ("KCBT") Rule 1114.01, Minneapolis Grain Exchange ("MGE") Rule 756.00, New York Cotton Exchange ("NYCE") Rule 5.10(b), New York Mercantile Exchange ("NYMEX") Rule 6.18(C) and Philadelphia Board of Trade, Inc. ("PBT") Rule 325. These exchange rules are described in greater detail below. The New York Futures Exchange, Inc. ("NYFE") has not amended its rule for the recording of orders because, as represented by NYFE, the volume of such trades at NYFE is extremely small (approximately 0.1 percent of trading volume). NYFE further asserts that it has an effective CTI-3 surveillance program to monitor the small number of such trades.

¹ Futures Trading Practices Act of 1992, Pub. L. No. 102-546, 203, 106 Stat. 3590 (1992).

² These member-to-member orders are classified under Commission Regulation 1.35(e) as customer type indicator three ("CTI-3") orders. Regulation 1.35(e) requires each contract market to maintain a single record for each futures or option trade including, among other things, symbols indicating for whom an order is executed. The paragraph directs that CTI-3 be used to show that the person executing the trade was trading for another member present on the exchange floor, or an account controlled by such other member.

³ Letter from Andrea M. Corcoran, Director of the Division, to the president of each exchange (February 7, 1989).

regulations to establish new minimum recordkeeping standards for CTI-3 orders on all exchanges. Specifically, section 203 amends section 4c of the Commodity Exchange Act ("Act") (7 U.S.C. 6c) by adding a new subsection (g) which directs the Commission to "adopt rules requiring that a contemporaneous written record be made, as practicable, of all orders for execution on the floor or subject to the rules of each contract market placed by a member of the contract market who is present on the floor at the time such order is placed."⁷

In compliance with the mandate for a contemporaneous written record of CTI-3 orders, the proposed amendments generally would require that CTI-3 orders be recorded either on order tickets or trading cards. The order ticket would be prepared in the same manner as is currently required for customer orders under Commission Regulation 1.35(a)(2).⁸ The proposed amendments would allow the order ticket to be prepared by either the member initiating the CTI-3 order ("initiating member") or the member receiving and executing the order ("executing member").⁹ The order ticket would be prepared in non-erasable ink and would include the account identification and order number. In addition, the date and entry time of the order must be time-stamped on the order ticket. The amendments also would require the executing member to have the order ticket time-stamped to the nearest minute when the report of the order's execution is made, as is currently required for customer orders under Commission Regulation 1.35(a)(4).

Alternatively, the proposed amendments provide that the required contemporaneous written record for CTI-3 orders may appear on separate trading cards or other records. Under this procedure, the initiating member

would record on his sequentially-numbered trading card information reflecting the orders' terms and the time of placement to the nearest minute. The executing members would record on his trading card or other record the terms of execution, the time of execution to the nearest minute and other trading card recordkeeping requirements in accordance with the provisions of Commission Regulation 1.35(d).¹⁰ The proposed amendments also would require that the executing member return his trading card or record on which the execution of the trade is recorded to the initiating member. The initiating member then would be required to submit both his own trading card and the record he receives from the executing member together to contract market personnel or to his clearing member.¹¹

The proposed amendments also would authorize exchanges to adopt rules providing for an alternative to the order ticket or trading card method of generating contemporaneous written records for CTI-3 orders. Any rules promulgated under this authority must be submitted to the Commission pursuant to section 5a(12) of the Act and Regulation 1.41. The proposed amendments set forth minimum standards required to be met by any alternative contemporaneous written records. Under the proposed amendments, it would be essential that any contemporaneous written record reflect the terms of the order and include reliable timing data sufficient to permit the complete and effective reconstruction of the time and sequence of CTI-3 order executions.

The contemporaneous written record, in either order ticket or trading card form or pursuant to other exchange rule in accordance with the proposed amendments, is intended to establish an accurate record of the time that a CTI-3 order is entered and executed. If placed on an order ticket, the time of

placement and the time of report of execution would be time-stamped. Alternatively, if trading cards are used, the time of placement and the time of execution would be manually recorded on them.¹² These timing data are critical audit trail components for trade reconstruction purposes to detect trade practice abuses.

B. Exception for Spread Transactions

Section 203 of the Futures Trading Act directs the Commission to adopt rules requiring that contemporaneous written records be made, "as practicable," of CTI-3 orders. In light of this statutory flexibility, and in consideration of existing trading practices at some exchanges, the proposed amendments would provide a limited exception from the above requirements for certain spread transactions. A contemporaneous written record would not be required where the CTI-3 order is for a portion of an inter-commodity¹³ or futures/option spread which cannot be executed in a single transaction at a differential, where the initiating member personally executes one or more legs of the spread. For the CTI-3 component of such trades, the proposed amendments would maintain the current Commission requirement that the executing member immediately upon the execution of the order, record on his trading card or other record the terms of the execution including the time of execution to the nearest minute.¹⁴

This spread exception is provided so as not to unreasonably burden members

⁷ Futures Trading Practices Act of 1992, Pub. L. No. 102-546, section 203, 106 Stat. 3590 (1992).

⁸ A customer-type order ticket was acknowledged specifically by Congress to be an appropriate form of "contemporaneous written record" within the meaning of the statute. In this connection, the conference report on the Futures Trading Act specifies that "if a written order is prepared as required for customers under Commission regulations, then that record would satisfy the requirements" for a contemporaneous written record of CTI-3 orders. H.R. Conf. Rep. No. 978, 102d Cong., 2d Sess. 54 (1992).

⁹ As indicated below, most exchange CTI-3 rules state that the executing member must prepare the order ticket. However, in some instances, the initiating member may direct that the order ticket be prepared and time-stamped at his or her clearing firm's desk. By providing that the written record may be prepared by either the executing member or the initiating member, the proposed amendments would accommodate existing exchange rules and trading procedures.

¹⁰ Briefly, Regulation 1.35(d) states, among other things, that a member's trading card or record shall show the member's name, clearing members' name, transaction date and time, quantity, commodity, price, month, opposite broker or trader and opposite clearing member. Trades must be recorded in non-erasable ink, on consecutive lines of numerically sequenced trading cards.

¹¹ The trading card or record used by the executing member to record the trade execution and timing information may be a non-sequenced trading card or record used to record flashed orders, including CTI-3 orders. This record would denote the time of execution and would be submitted to clearing together with an initiating member's sequenced trading card indicating the time the order was placed. By establishing verifiable placement and execution times and other order information, the documents collectively would furnish the critical audit trail data necessary for complete and effective trade reconstruction.

¹² As previously noted, the Division had found an unacceptable level of compliance with the current requirement that the executing member record the execution time of a CTI-3 order. The Division anticipates that the proposed amendments would enhance the level of compliance because initiating members would be required to prepare, independently of executing members, a written record which would include the placement time for the CTI-3 order, and both records would be required to be submitted together to clearing. These dual records would make trading violations more easily detectable and thereby would reduce the potential for the executing member to use that CTI-3 order for illegal purposes. The fact that an executing member would receive a CTI-3 order from an initiating member who was required to document the order, should serve as an incentive to the executing member to fulfill his recordkeeping responsibilities. In an ongoing investigation involving trading on the Chicago Board of Trade, Division of Enforcement staff have noted frequent failures by brokers to manually record trade times for CTI-3 trades as required by existing rules. In part, these failures appear to stem from the fact that CTI-3 orders on the exchange are often routed through clerks, who do not provide full information about the source of the order to the executing member.

¹³ An inter-commodity spread, as used here and in the proposed amendments, refers to a spread consisting of one or more legs in each of two or more economically-related commodities.

¹⁴ Commission Regulation 1.35(a)(3).

legging into inter-commodity or futures/option spreads by having them prepare a written record for the CTI-3 order while executing a leg of the spread and signalling or verbally transmitting the order for another leg. An initiating member who participates in such spreads incurs a risk of adverse price movement during the time transpiring before all legs are executed. Therefore, the Commission believes that imposing additional recordkeeping requirements on the initiating member for these types of spread transactions may unduly impair the member's ability to fulfill the intended spread trade at the desired price. Accordingly, the proposed exception is intended to preserve market efficiency and liquidity.

The proposed exception would apply only to inter-commodity or futures/option spreads which cannot be executed in a single transaction at a differential. All other spread transactions would require the preparation of a contemporaneous written record pursuant to other provisions of the proposed amendments. Such other spreads would include all intra-commodity spreads,¹⁵ those inter-market spreads¹⁶ and futures/option spreads for which an exchange has established a designated area for the simultaneous execution of both legs, and spreads where the initiating member does not participate in the execution of either leg of the spread. Although the exception is intended to be permissive, those exchange rules providing for a spread exception may do so only in a manner that is not inconsistent with the terms of the exception as provided in the proposed amendments.

Inter-commodity and futures/option spreads generally are time sensitive market transactions. If a trader chooses to spread two months of the same commodity (intra-commodity spread), there usually is a specific place in the pit where a market exists so that he may execute both sides of the spread at a price differential in a single transaction. Alternatively, the trader can execute each side of the spread separately. This is not the case, however, for most inter-commodity or futures/option spreads. Members trading these spreads can do so either (i) by travelling to both pits and executing the legs separately, making true spread execution unlikely

since contemporaneous or prompt execution would be difficult, or (ii) at about the same time executing a leg in one pit and transmitting orally or through hand signals an order to another pit so that the spread may be executed promptly at the most advantageous price. Requiring a member to prepare a written record for one leg of a spread while executing another leg could delay execution of both legs, making it more difficult to execute the spread for the intended quantity at the desired price.

By excepting the initiating member from the contemporaneous written record requirement for CTI-3 legs of an inter-commodity or futures/option spread where the initiating member executes one or more legs and all legs are executed promptly, the amendments would permit the initiating member to effectively execute such transactions although remaining in his primary pit.

III. Current Exchange Rules Addressing CTI-3 Orders

As previously stated, almost all exchanges voluntarily have implemented rules requiring some type of written order record for CTI-3 orders. Although many exchange rules recite similar provisions, the rules vary based on: (i) The type of written record required (order ticket or trading card); (ii) the party responsible for preparing the record (initiating member or executing member); (iii) the time that such records must be prepared (upon placement or receipt of the order or prior to execution of the order); and (iv) the exception, if any, provided for spread transactions.

The exchanges requiring the preparation of an order ticket for CTI-3 orders are the ACC, CSC, KCBT, MGE, NYCE, NYMEX and the PBT. Those exchanges allowing for the order and its execution to be recorded on trading cards or order tickets include COMEX, CME, CBT and MIDAM. Spread exceptions are contained in the COMEX, KCBT, NYMEX, CME, CBT and MIDAM rules.

Among the exchanges requiring the preparation of an order ticket, the ACC, CSC, MGE and NYMEX rules require that the executing member, immediately upon receipt of a CTI-3 order, prepare a written record of the order.¹⁷ The rules

at the ACC, CSC and MGE each require that the written record include the account identification and order number and that the date and time to the nearest minute that the order is received on the floor be time-stamped on the order ticket. The NYMEX rule requires the executing member to number or identify the order ticket by symbol, time-stamp the order ticket both upon receipt and upon execution and note the initiating member's alphabetical code.

KCBT Rule 1114.01 and NYCE Rule 5.10(b)(4) also require the preparation of an order ticket for CTI-3 orders. These exchange rules require that the executing member, prior to executing the CTI-3 order, have in his possession or prepare an order ticket. Under these rules the initiating member or the executing member can prepare the order ticket. Also, these rules permit the order ticket to be prepared "prior to execution," rather than "immediately upon receipt," as provided in the proposed amendments. The order ticket will have the standard customer order ticket information as described above.

COMEX Rule 4.81(c) and PBT Rule 325(c) place the responsibility for preparing an order ticket on the initiating member. At COMEX, the order ticket must record the terms of the order and reflect, by time-stamp, the time the order was placed. The COMEX rule alternatively allows the initiating member to record the time of placement on his trading card in instances where an order ticket is not prepared. In this case, the executing member would record the execution on his trading card. PBT's rule states that the initiating member shall prepare an order ticket indicating the commodity, quantity, month and, as applicable, put or call and strike price at the time he places the order.

CBT and MIDAM Rule 332.09 and CME Rule 536 require that the initiating member record the order and time of placement, to the nearest minute, on his trading card, in sequence with other trading cards used by the member.¹⁸ The executing member must record the execution time to the nearest minute on a trading card or other record and return the record to the initiating member following execution of the trade.¹⁹ The

¹⁵ An intra-commodity spread consists of a long position in one contract month taken against a short position in another contract month of the same commodity on the same exchange.

¹⁶ As used here, an inter-market spread is a long position on one exchange and a short position on another exchange in the same or a related commodity.

¹⁷ See ACC Rule 621, CSC Rule 1.12(c)(1), MGE Rule 756.00 and NYMEX Rule 6.18(C). ACC Rule 621 does not mention CTI-3 orders specifically, however, the rule states that it applies to "every order * * * which is not in the form of a written record * * *." In addition, as previously stated, although these rules require the executing member to prepare the order ticket, in practice at many exchanges the ticket is prepared at the initiating member's direction.

¹⁸ At each of these exchanges, CTI-3 orders also may be recorded on order tickets. However, trading cards are predominantly used because most of the CTI-3 orders at these exchanges are transmitted verbally or by hand signals.

¹⁹ At the CME, the execution information is not recorded on the executing member's sequentially-numbered trading card, which generally is only used to record his personal trades. At the CBT and MIDAM, the execution information may be (but is

initiating member then must submit both documents, i.e., his sequenced trading card reflecting time of placement and the record on which the executing member recorded the time of execution, to his clearing member. CME Rule 536 specifically requires that the documents be submitted together. CBT and MIDAM rules only require that both documents be submitted to clearing.

An exception from the written record requirement for certain spread transactions currently is authorized by rule at COMEX, KCBT, NYMEX, CME, CBT and MIDAM. COMEX exempts inter-commodity and futures/option spreads from its order ticket/trading card requirements for the initiating member, although the executing member would continue to be responsible for recording the trade execution time on his trading card. At KCBT and NYMEX, the exception is for orders that are executable as part of intermarket spreads²⁰ or options offset transactions. At the CME, CBT and MIDAM, the initiating member would not have to record the order and time of placement to the nearest minute on his trading card for option/futures combinations and other spread trades.²¹ Under these three exchanges' rules the executing member must still record the order and time of execution on a trading card upon execution, and return that card to the initiating member. Each of the six exchanges providing for a spread exception does so only where the initiating member participates in the execution of at least one leg of the spread.²²

not required to be) recorded on the executing member's sequentially-numbered trading card.

²⁰ KCBT and NYMEX have represented to Division staff that "intermarket" as used in KCBT Rule 1114.01 and NYMEX Rule 6.18 has the same meaning as "inter-commodity" as defined previously in reference to the proposed amendments.

²¹ Although the inclusion of the phrase "other spread trades" appears to contemplate a broader range of spread trades than merely inter-commodity spreads, all three exchanges have indicated that they exempt only inter-commodity spreads and futures/option spreads which cannot be executed at a differential.

²² COMEX Notice 92-14 advises that the initiating member is excused from making a time of placement record if the order involves a leg of a futures/option or intercommodity spread and the initiating member executes the other leg. KCBT and NYMEX have represented to Division staff that such initiating member participation is required for the exception. CME Special Executive Report S-2259 requires the additional documentation reflecting time of order placement when a member initiates a verbal order for both sides of a spread trade. CBT Clarification Notice dated November 20, 1991 advises members that trades exempt from the additional documentation requirement for time of placement must be part of a spread strategy and must be partially executed by the initiating member. The cover letter attached to the MIDAM rule submission states that the exemption applies

In general, existing rules regarding CTI-3 orders adopted since the Commission first indicated an interest in improving the audit trail for CTI-3 orders would comply with the standards in the proposed amendments. Where there are differences they are, for the most part, technical in nature. Therefore, the Commission does not anticipate that exchange rules would require significant amendments to conform to or exceed the minimum standards set forth in the proposed amendments.²³

IV. Proposed Amendments to Regulation 1.35

Under the proposed amendments, current Regulation 1.35(a)(2), which addresses the preparation of written records for customer orders received on the floor that are not in the form of a written record, would be divided into four subparagraphs. New subparagraph (i) of the proposed amendments would retain substantially identical language to that now contained in Regulation 1.35(a)(2). Subparagraph (ii) would be added to set forth the alternative order ticket and trading card recordkeeping requirements for CTI-3 orders. Subparagraph (iii) generally would allow exchanges to implement alternate methods for preparing written records for CTI-3 orders provided that such methods include reliable data which would facilitate complete and effective reconstruction of the time of execution of such orders. Subparagraph (iv) would require exchanges to implement surveillance for compliance with recordkeeping requirements for CTI-3 orders and for trading abuses related to such orders. Regulation 1.35(a)(3) would be revised to address the recordkeeping requirements for certain CTI-3 spread trades as previously discussed. Regulation 1.35(a)(4) would be amended to require that order tickets prepared for CTI-3 orders be timestamped upon report of execution.

A. Proposed Regulation 1.35(a)(2)(ii)(A)—Order Tickets

New subparagraph (ii)(A) sets forth the proposed requirement for the preparation of an order ticket for CTI-3 orders. Specifically, subparagraph (ii)(A) would require that any member of a contract market who receives an

only to those spread trades where the initiating member partly executes or attempts to execute one leg of the spread.

²³ NYFE does not have a rule requiring a written record for CTI-3 orders. NYFE Rule 410—Recording of Orders, specifically exempts CTI-3 orders from the general requirement that a member, immediately upon receipt of an order which is not in the form of a written record, must prepare a written record of such order.

order which is not in the form of a written record from another member present on the floor to immediately upon receipt of the order prepare a written record of the order, or obtain a written record of the order from the member placing the order. The written record would be required to: (a) Be prepared in non-erasable ink; (b) include the account identification and order number; and (c) be time-stamped with the date and time to the nearest minute that the order was entered. The proposed subparagraph would result in an improved audit trail for CTI-3 orders by requiring the creation of an order ticket, similar to a customer order ticket, that reflects the time the order was entered on the floor of the exchange.

B. Proposed Regulation 1.35(a)(2)(ii)(B)—Trading Cards or Other Records

As an alternative to the above order ticket requirement, new subparagraph (ii)(B) would authorize the recording of a CTI-3 order on a separate trading card by the initiating member, and on a separate trading card or other record by the executing member. To comply with this new subparagraph: (a) The initiating member must, immediately upon placement of the order, record the time of placement to the nearest minute on his sequentially-numbered trading card maintained in accordance with the trading card recordkeeping requirements of paragraph (d) of Regulation 1.35; (b) the executing member must record the time of execution to the nearest minute on his trading card or other record maintained in accordance with the requirements of paragraph (d); (c) the executing member must return his trading card or record to the initiating member; and (d) the initiating member must submit both his own trading card and the other trading card or record together to exchange personnel or the clearing member for clearing purposes.

C. Proposed Regulation 1.35(a)(2)(iii)—Alternative Exchange Rules

New subparagraph (iii) would authorize exchanges to adopt rules providing for an alternative method for generating contemporaneous written records for CTI-3 orders subject to certain minimum standards. Such exchange rules would, among other things, have to require a contemporaneous written record which included the terms of the order and reliable timing data sufficient to permit the complete and effective reconstruction of the CTI-3 order execution. In addition, such rules would have to provide that the written records

so generated be submitted for clearing purposes.

D. Proposed Regulation 1.35(a)(2)(iv)—Exchange Surveillance Programs

New subparagraph (iv) would require each contract market, as part of its trade surveillance program, to conduct effective surveillance for compliance with the CTI-3 order-related recordkeeping requirements of Regulation 1.35(a)(2), and for trading abuses related to the execution of CTI-3 orders.

E. Proposed Regulation 1.35(a)(3)—Exception for Certain Spread Transactions

Proposed amendments to Regulation 1.35(a)(3) would allow contract markets to adopt rules which have been submitted to the Commission which provide for an exception to the order ticket and trading card recordkeeping requirements described in proposed Regulation 1.35(a)(2)(ii) where: (a) The CTI-3 order is part of an inter-commodity or futures/option spread that cannot be executed in single transaction at a differential; (b) the initiating member personally executes at least one leg of the spread; and (c) the executing member immediately upon the execution of the order records the time of execution to the nearest minute on his trading card or other record. The proposed recording requirement for excepted spread transactions would be that currently provided in Commission Regulation 1.35(a)(3) for CTI-3 orders. Under that regulation, the member receiving and executing a CTI-3 order is required to prepare a written record of order execution immediately upon the execution of the order, showing the execution terms and the time of execution.

F. Proposed Regulation 1.35(a)(4)—Other Recordkeeping Requirements

Paragraph (a)(4) of Regulation 1.35 would be amended to require that order tickets prepared for CTI-3 orders be time stamped with the date and time to the nearest minute of the report of execution. Under the proposed amendment, such recording would be done by the executing member or clearing member. The executing member also must submit the order ticket to contract market personnel or to the clearing member responsible for collecting the order ticket. These requirements are the same as those currently applicable to customer order tickets.

V. Conclusion

The Commission believes that the proposed amendments to Regulation 1.35 fully implement the statutory requirement contained in the Futures Trading Act. The amendments balance the demonstrated need for improved recordkeeping with existing trading procedures and exchange requirements. The proposed amendments would ensure to the extent practicable an enhanced audit trail by establishing the time frame in which a CTI-3 order is active on the floor. Without the ability to reconstruct the time of placement and execution of CTI-3 trades by review of written records, as provided for in the proposed amendments, the potential exists for CTI-3 trades to be used in a manner detrimental to public customers and the integrity of the markets. The amendments also would permit existing exchange rules to remain in effect with only minor, non-substantive modifications at certain exchanges.

VI. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small entities. The proposed amendments to Regulation 1.35 affect contract markets and contract market members. The Commission previously has determined that contract markets are not "small entities" for purposes of the RFA, and that the Commission, therefore, need not consider the effect of the proposed amendments on contract markets. 47 FR 18618, 18619 (April 30, 1982).

With respect to contract market members, the Commission has stated that it is appropriate to evaluate within the context of a particular rule proposal whether some or all members that would be affected by the rule should be considered small entities, and, if so, to analyze the economic impact on such entities at that time. 47 FR 18618, 18620 (April 30, 1982).

The Commission recognizes that contract market members would be subject to the proposed amendments and that certain contract market members could be considered to be small entities for the purposes of the RFA. However, the Commission believes that the proposed amendments, as designed, would not have a significant impact on a substantial number of small entities. The Commission is proposing these amendments in accordance with the requirements of the Futures Trading Act. The Commission believes that the

proposed amendments afford the exchanges and market participants substantial flexibility and would have minimal, if any, effect on current trading practices. Significantly, all but one exchange already have implemented rules regarding CTI-3 orders that impose requirements similar to those in the proposed amendments. Also, the proposed amendments generally are consistent with the recordkeeping standards currently applicable to non-CTI-3 orders.

Accordingly, the Chairman, on behalf of the Commission, hereby certifies, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), that the proposed amendments will not have a significant economic impact on a substantial number of small entities. The Commission will evaluate any additional data provided suggesting that the proposed amendments would have a significant impact on small entities in determining whether to complete a regulatory flexibility analysis with the final rulemaking. The Commission invites specific comment regarding the potential cost of this proposal for small entities and alternative less burdensome means to effect the Commission's objectives.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 ("PRA"), 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission has submitted the proposed amendments and their associated information collection requirements to the Office of Management and Budget ("OMB"). The burden associated with the entire collection, including the proposed amendments is as follows:

Average Burden Hours Per Response: .0166.

Number of Respondents: 1,126.

Frequency of Response: On occasion.

The burden associated with the proposed amendments is as follows:

Average Burden Hours Per Response: 81.86.

Number of Respondents: 176,830.

Frequency of Response: On occasion.

Persons wishing to comment on the information which would be required by the proposed amendments should contact Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503, (202) 395-7340. Copies of the information collection submission to OMB are

available from Joe F. Mink, CFTC Clearance Officer, 2033 K Street, NW., Washington, DC 20581, (202) 254-9735.

List of Subjects in 17 CFR Part 1

Commodity futures, Commodity options, Registration, Reporting and recordkeeping requirements.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4c(g) and 8a(5) thereof, 7 U.S.C. 6c(g) and 12a(5), the Commission proposes to amend Part 1 of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 continues to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6l, 6m, 6n, 6o, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23 and 24, unless otherwise noted.

§ 1.35 [Amended]

2. Section 1.35(a)(2) as proposed to be revised would read as follows:

(a) * * *

(2)(i) Each member of a contract market who on the floor of such contract market receives a customer's or option customer's order which is not in the form of a written record including the account identification, order number, and the date and time, to the nearest minute, such order was transmitted or received on the floor of such contract market, shall immediately upon receipt thereof prepare a written record of such order in non-erasable ink, including the account identification and order number and shall record, thereon, by time-stamp or other timing device, the date and time to the nearest minute, the order is received.

(ii) Except as provided in paragraph (a)(3) of this section:

(A) Each contract market member who on the floor of such contract market receives an order which is not in the form of a written record from another member present on the floor of such contract market, shall immediately upon receipt of such order prepare a written record of such order, or obtain from the member who placed the order a written record of the order, in non-erasable ink including the account identification and order number and shall record thereon, by time-stamp or other timing device, the date and time to the nearest minute, the order is received or transmitted, as appropriate; or

(B) When a contract market member present on the floor places an order,

which is not in the form of a written record, for his own account or an account over which he has control, with another member of such contract market for execution: (1) The member placing such order immediately upon placement of the order shall note the time of placement to the nearest minute on a sequentially-numbered trading card maintained in accordance with the requirements of paragraph (d) of this section; (2) the member receiving and executing such order immediately upon execution of the order shall note on a trading card or other record maintained pursuant to the requirements of paragraph (d) of this section, the time of execution to the nearest minute; and (3) the member receiving and executing the order shall return such trading card or other record to the member placing the order. The member placing the order then shall submit together both of the trading cards or other records documenting such trade to contract market personnel or the clearing member, in accordance with contract market rules adopted pursuant to paragraph (j)(1) of this section.

(iii) Each contract market may adopt rules, which must be submitted to the Commission pursuant to section 5a(12) of the Act and Commission Regulation 1.41, that provide alternative requirements to those contained in paragraph (a)(2)(ii) of this section. Such rules shall, at a minimum, require that the contemporaneous written records: (A) Contain the terms of the order; (B) include reliable timing data which would permit complete and effective reconstruction of the placement and execution; and (C) be submitted to contract market personnel or clearing members in accordance with contract market rules adopted pursuant to paragraph (j)(1) of this section.

(iv) Each contract market shall, as part of its trade surveillance program, conduct surveillance for compliance with the recordkeeping requirements under paragraphs (a)(2)(ii) and (iii) of this section, and for trading abuses related to the execution of orders for members present on the floor of the contract market.

(3) The requirements of paragraph (a)(2)(ii) of this section shall not apply if a contract market adopts rules which have been submitted to the Commission pursuant to section 5a(12) of the Act and Commission Regulation 1.41, which provide for an exception where: (i) A contract market member places with another member of such contract market an order that is part of an inter-commodity or futures/option spread that cannot be executed in a single transaction at a differential; (ii) the

member placing the order personally executes one or more legs of the spread; and (iii) the member receiving and executing such order immediately upon execution of the order notes the time of execution to the nearest minute on his trading card or other record maintained in accordance with the requirements of paragraph (d) of this section.

(4) Each member of a contract market reporting the execution from the floor of the contract market of a customer's or option customer's order or the order of another member of such contract market received in accordance with paragraphs (a)(2)(i) or (a)(2)(ii)(A) of this section, shall record on a written record of such order, including the amount identification and order number, by time-stamp or other timing device, the date and time to the nearest minute such report of execution is made. Each member of a contract market shall submit the written records of customer orders or orders from other contract market members to contract market personnel or to the clearing member responsible for the collection of orders prepared pursuant to this paragraph as required by contract market rules adopted in accordance with paragraph (j)(1) of this section. The execution price and other information reported on such order tickets must be written in non-erasable ink.

* * *

Issued in Washington, DC, on December 16, 1992, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 92-31427 Filed 12-29-92; 8:45 am]

BILLING CODE 8351-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-56-90]

RIN 1545-A078

Application of Section 514(c)(9)(E) of the Internal Revenue Code to Partnerships in Which One or More (But Not All) of the Partners Are Qualified Organizations Within the Meaning of Section 514(c)(9)(C); Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document contains notice of a public hearing on proposed regulations relating to the application of

section 514(c)(9)(E) of the Internal Revenue Code to partnerships in which one or more (but not all) of the partners are qualified tax-exempt organizations within the meaning of section 514(c)(9)(C).

DATES: The public hearing will be held on Wednesday, March 31, 1993, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Wednesday, March 10, 1993.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T.R. (PS-56-90) room 5228, Washington, DC. 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-622-8452 or (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 514 (c)(9)(E) of the Internal Revenue Code. The proposed regulations appear elsewhere in this issue of the *Federal Register*.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Wednesday, March 10, 1993, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Service Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Cynthia E. Grigsby,

Alternate Federal Register Liaison Officer,
Assistant Chief Counsel (Corporate).

[FR Doc. 92-30427 Filed 12-29-92; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[IA-57-89]

RIN 1545-AN73

Consolidated Returns—Alternative Minimum Tax

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes regulations under sections 53 through 59, 1502, and 1552 of the Internal Revenue Code relating to the computation of the alternative minimum tax by consolidated groups. The regulations also provide rules for allocating items such as the consolidated alternative minimum tax liability and the consolidated minimum tax credit among the members of a consolidated group. In addition, certain conforming amendments are proposed for related regulations dealing with the computation of adjusted current earnings.

DATES: Written comments and requests to speak (with outlines of oral comments to be presented) at the public hearing scheduled for April 6, 1993, at 10 a.m., must be received by March 1, 1993.

ADDRESSES: Send submissions to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:TR (IA-57-89), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Martin Scully, Jr. of the Office of the Assistant Chief Counsel, Income Tax and Accounting, (202) 622-4960 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

For taxable years beginning after December 31, 1986, corporations are subject to both the regular tax and the alternative minimum tax (AMT). These proposed regulations apply the AMT to consolidated groups. The Internal Revenue Service recognizes that application of the statutory AMT provisions to consolidated groups is complex and requests comments on how these proposed regulations might be further simplified.

Explanation of Provisions

I. Computation of Consolidated AMT

A. In General

The Service believes that Congress generally intended the AMT and adjusted current earnings (ACE) systems to be separate from, and parallel to, the regular tax system. See, e.g., § 1.56(g)-1 (a) (5). Accordingly, under the separate and parallel principle, all of the provisions of the Internal Revenue Code (Code) and regulations apply in determining consolidated alternative minimum taxable income (AMTI) and consolidated ACE unless the Service provides otherwise in regulations or other guidance.

The proposed regulations apply the separate and parallel principle to consolidated groups. They do not, however, illustrate how this principle applies in all cases. For example, although not discussed in the regulations, the loss disallowance rules of § 1.1502-20 and the life/non-life consolidation rules of § 1.1502-47 apply to consolidated groups under the AMT and ACE systems. Unless an exception to the separate and parallel principle is provided, the separate and parallel principle governs the treatment of all consolidated AMT and ACE items.

The proposed regulations provide rules for (a) computing the AMT liability of a consolidated group (consolidated AMT) and (b) allocating various consolidated AMT attributes to members as necessary (e.g., to determine the allocation of the attributes when a corporation ceases to be a member). The statutory scheme and definitions in sections 53 through 59 of the Code generally apply in determining consolidated AMT, as modified in the proposed regulations to clarify their application to consolidated groups. Thus, consolidated AMT is the excess of consolidated tentative minimum tax (TMT) for the taxable year over consolidated regular tax for the taxable year. Consolidated TMT is determined by first computing 20 percent of the excess of consolidated AMTI for the taxable year over a consolidated exemption amount. That amount is then reduced by the consolidated AMT foreign tax credit in arriving at consolidated TMT. Consolidated regular tax is computed in accordance with the principles of section 55(c) of the Code.

Consolidated AMTI is equal to consolidated pre-adjustment AMTI, increased or decreased by the consolidated ACE adjustment, and then decreased by the consolidated alternative tax net operating loss (ATNOL) deduction, which is the

consolidated NOL deduction taking into account the AMT adjustments and preferences.

Under the separate and parallel principal, a consolidated group generally computes its AMT liability in much the same way as its regular tax liability. For example, consolidated pre-adjustment AMTI is computed in accordance with §§ 1.1502-11 and 1.1502-12 principles. The separate pre-adjustment AMTI of each member is calculated under § 1.1502-12, determined by taking into account the adjustments and preferences in sections 56 (excluding the ACE adjustment under section 56(g)), 57, and 58. The separate pre-adjustment AMTIs of the members are then aggregated under § 1.1502-11 principles. Next, the consolidated items listed in § 1.1502-11 (other than the consolidated NOL deduction), determined by taking into account the adjustments and preferences of sections 56 (excluding the section 56(g) ACE adjustment), 57, and 58, are added to that aggregate amount to arrive at consolidated pre-adjustment AMTI. Consolidated ACE is calculated in a similar manner.

Under the method proposed for calculating consolidated AMT, separate member data will be available to calculate each member's allocable share of the group's consolidated AMT for purposes of determining annual stock basis adjustments under proposed §§ 1.1502-19 and 1.1502-32 and annual adjustments to earnings and profits under § 1.1502-33. In addition, the proposed method will provide groups with the separate corporation data necessary for various other computations required under the consolidated return regulations. See, e.g., proposed § 1.1502-76(b) (allocating a subsidiary's income between separate and consolidated returns). Finally, because the proposed method parallels the computation of consolidated regular taxable income, it should be familiar to taxpayers.

To implement the proposed approach to the computation of consolidated AMT, certain conforming amendments are necessary. At present, § 1.56(g)-1(n)(3) of the ACE regulations provides that consolidated pre-adjustment AMTI is the consolidated taxable income (as defined in § 1.1502-11) of a consolidated group determined with appropriate adjustments and preferences. The Service proposes to amend the ACE regulations to specify that under the separate and parallel principle a consolidated group computes its consolidated ACE in accordance with the rules for computing consolidated regular taxable income in

§§ 1.1502-11 and 1.1502-12, as modified in these proposed regulations.

B. Treatment of Adjustments and Preferences

In most cases, the amount of a preference or adjustment is not affected by whether the item is computed separately by each member or on a consolidated basis. The Service has, however, identified three preference items that are affected by whether they are computed on a consolidated basis: (a) The preference for excess intangible drilling costs (IDCs); (b) the preference for charitable contributions of appreciated property; and (c) the preference for bad debt reserves of financial institutions. As discussed below, the proposed regulations apply a consolidated approach to compute the preferences for excess IDCs and charitable contributions, and a separate member approach to compute the preference for bad debt reserves.

1. *Section 57(a)(2) preference for excess IDCs.* Section 57(a)(2) provides a preference equal to the amount by which excess IDCs are greater than 65 percent of net income from all oil, gas, and geothermal properties of the taxpayer. Because section 57(a)(2) applies with respect to all such properties of the taxpayer, "excess net income" from one property (i.e., where 65 percent of the property's net income is greater than the excess IDCs) can offset a section 57(a)(2) preference that would otherwise be generated by other properties held by the taxpayer. Similarly, the proposed regulations provide that the section 57(a)(2) IDC preference is computed using a consolidated approach. Thus, one member's section 57(a)(2) preference may be offset by another member's excess net income from oil, gas, and geothermal properties.

Although the IDC preference is computed using a consolidated approach, it is nevertheless allocated back to the members and included in the computation of separate pre-adjustment AMTI. This treatment is consistent with the regular tax treatment of the limitation on percentage depletion deductions under § 1.1502-44, which is computed using a consolidated approach but is included in separate taxable income under § 1.1502-12(p).

2. *Section 57(a)(6) preference for charitable contributions of appreciated property.* Section 57(a)(6) provides a preference equal to the amount by which the section 170 charitable contribution deduction would be reduced if all capital gain property (as defined in section 57(a)(6)(B)) were

taken into account at its adjusted basis. Under §§ 1.1502-11(a)(5) and 1.1502-24, a consolidated section 170 deduction is computed. Therefore, to be consistent with the single entity principles of §§ 1.1502-11 and 1.1502-24, the section 57(a)(6) preference is computed on a consolidated basis. The proposed regulations provide that the consolidated section 57(a)(6) preference is the amount by which the consolidated charitable contribution deduction would be reduced if all capital gain property of the group were taken into account at its adjusted basis.

3. *Section 57(a)(4) preference for bad debt reserves of financial institutions.* Section 57(a)(4) provides a preference equal to the amount by which a financial institution's allowable section 593 deduction for a reasonable addition to a reserve for bad debts (the section 593 deduction) exceeds the amount that would have been allowable under section 585(b) had the financial institution maintained its bad debt reserve for all taxable years on the basis of actual experience (the hypothetical section 585 deduction).

Section 593 does not specifically set forth the amount to be deducted. For example, for qualifying real property loans, a financial institution subject to section 593 may generally deduct an amount equal to the amount determined under section 593(b)(2) (the percentage of taxable income method), an amount equal to the amount determined under section 585(b), or some lesser amount. Thus, each section 593 financial institution makes an election regarding its reasonable addition to its reserve for bad debts for the taxable year. The Service believes that, because each member's section 593 deduction is determined separately based on elections made and methods of accounting employed by that member, the section 57(a)(4) preference should also be determined separately by each member.

In addition, if the section 57(a)(4) preference were computed on a consolidated basis, an undue double benefit to taxpayers could result. If a financial institution chooses under section 593 to deduct an amount that is less than its hypothetical section 585(b) deduction, the next year's hypothetical section 585(b) deduction is increased by the difference between the institution's hypothetical section 585(b) deduction and its section 593 deduction. This increase in the hypothetical section 585(b) deduction in the next year potentially lowers the section 57(a)(4) preference in that year. If, in addition to lowering the next year's preference, the difference between the institution's

hypothetical section 585(b) deduction and its section 593 deduction were to offset the current year preferences of other group members, the group could obtain a double benefit.

C. Rules Relating to Separate Return Limitation Years

The proposed regulations do not limit a consolidated group's use of net positive ACE adjustments arising in a separate return limitation year (SRLY). Although a negative ACE adjustment may be used only to the extent of prior net positive ACE adjustments, the Service has concluded that the increased compliance burden of applying the SRLY rules to net positive ACE adjustments is not warranted.

The proposed regulations reserve, however, on other applications of the SRLY limitations.

D. Carryovers and Carrybacks of Consolidated AMT Items to Separate Return Years

The proposed regulations provide rules for the carryover and carryback of consolidated AMT items—items for which there are regular tax counterparts, as well as the consolidated ACE adjustment—to separate return years of a member. In the case of consolidated AMT items for which there are regular tax counterparts (e.g., consolidated ATNOLs and consolidated AMT and ACE net capital losses), the portion of the item that is allocated to a corporation ceasing to be a member and carried to its separate return years is determined in accordance with the regular tax principles relating to the parallel regular tax item. In general, a consolidated item is allocated to a member based on its proportionate share of the separately determined items of all members. See e.g., proposed § 1.1502-21(b)(2) (carryovers and carrybacks of consolidated net operating losses to separate return years).

The proposed regulations also provide rules for allocating consolidated positive ACE adjustments (i.e., the increases in consolidated AMTI of the group in prior years due to the consolidated ACE adjustment) to members. Because a current year negative ACE adjustment is allowable only to the extent that prior year positive ACE adjustments exceed prior year negative ACE adjustments, positive ACE adjustments from prior years could be valuable to a corporation ceasing to be a member.

The proposed regulations provide that a member's portion of the consolidated positive ACE adjustments is taken into account in the member's separate return years under the principles of § 1.56(g)–

1(a)(2) and proposed § 1.1502-21(b). The member's portion of the consolidated positive ACE adjustments is based on the member's proportionate share of the separate cumulative ACE adjustments of all members (the consolidated cumulative ACE adjustment taking into account only the member's items). Because of the potentially burdensome nature of the cumulative allocation method, and the required recordkeeping, the Service considered not allocating the consolidated ACE adjustment to departing members. Under this alternative approach, the group's prior consolidated ACE adjustments would remain entirely with the group even when corporations responsible for that adjustment cease to be members. However, each member already must calculate its separate ACE and its separate pre-adjustment AMTI in computing consolidated AMTI. Further, even corporations filing separate returns must track their cumulative ACE history to determine whether a negative ACE adjustment may offset AMTI. The proposed regulations, therefore, do not adopt this non-allocation approach. The Service, however, solicits comments on whether the final regulations should provide that no allocations of the consolidated ACE adjustment should be made to departing members. These comments should address issues that would arise if no allocations were made, including acquisitions of groups and groups ceasing to exist as consolidated groups.

E. Deferral and Restoration of AMT Items

The proposed regulations provide rules relating to the deferral and restoration of AMT items. Under the separate and parallel approach, the regular tax principles used in computing consolidated taxable income are applied in computing consolidated pre-adjustment AMTI and consolidated ACE. See e.g., § 1.1502-13.

F. Stock Basis Adjustments

Proposed regulations modifying the determination of stock basis adjustments under § 1.1502-32 (and excess loss accounts under § 1.1502-19) were filed with the *Federal Register* on November 10, 1992. See CO-30-92 (57 FR 53634, 1992-48 I.R.B. 27). Based on those proposed regulations, this document proposes rules for adjusting stock basis (and excess loss accounts) in computing consolidated pre-adjustment AMTI and consolidated ACE. Under the separate and parallel approach, the principles of proposed §§ 1.1502-19 and 1.1502-32 for determining the regular

tax basis in (or the regular tax excess loss account with respect to) a member's stock are generally applied in computing consolidated pre-adjustment AMTI and consolidated ACE.

Certain modifications to the general principles are provided, however. For example, while recently-issued proposed regulations ordinarily require basis adjustments to be determined as of the close of each consolidated return year and as of any other time necessary to determine the tax liability of any person, basis adjustments in computing consolidated pre-adjustment AMTI and consolidated ACE are required only if a difference between the regular tax and AMT or ACE basis in a member's stock will affect the tax liability of any person (e.g., on the sale of the stock). Thus, the annual reporting requirements of proposed § 1.1502-32(g) are not applied under the AMT system.

II. Consolidated Minimum Tax Credit

A. General Rules

Under the proposed regulations, a group's consolidated minimum tax credit (MTC) is equal to the sum of (a) the consolidated return year MTC, and (b) the separate return year MTC. The proposed regulations provide rules for computing the consolidated return year MTC and the separate return year MTC. The consolidated MTC allowable for any consolidated return year is limited to the excess (if any) of modified consolidated regular tax for the year, over consolidated TMT for the year. Modified consolidated regular tax is the consolidated regular tax determined under the principles of section 26(b) reduced by all allowable credits (other than the consolidated MTC).

B. Carryover of Consolidated MTC to Separate Return Years

The proposed regulations provide rules for the carryover of the consolidated MTC to the separate return years of corporations that cease to be members. Specifically, the portion of the consolidated MTC that is allocated to a member and carried over to a separate return year is determined in accordance with the principles of section 53, § 1.1502-3(c), and proposed § 1.1502-21(b).

The amount of the consolidated MTC allocated to a member is generally the member's share of the group's consolidated adjusted net minimum tax for each consolidated return year, reduced by the member's share of the consolidated adjusted net minimum tax allowable as a consolidated MTC during consolidated return years for which the member was included in the group. A

member's allocable share of the consolidated adjusted net minimum tax is based on its proportionate share of the separate adjusted AMT of the members for the year. The separate adjusted AMT of a member is, in general, the excess of the consolidated AMT for the year over the consolidated AMT for the year computed by excluding the member's items.

The method provided in the proposed regulations for computing the separate adjusted AMT of each member takes into account not only the member's separate AMT, but also other contributions the member makes to consolidated AMT. For example, if a member has a regular tax net operating loss (NOL) on a separate basis that reduces consolidated regular tax, the NOL may increase consolidated AMT (unless the member's corresponding ATNOL reduces consolidated TMT by at least the same amount). Under the proposed regulations, if the member's NOL (considering its relationship to the ATNOL) increases consolidated AMT, that increase is taken into account in allocating consolidated MTC.

The Service is aware that, under the proposed allocation method, it is possible for a member with regular tax in excess of TMT on a separate company basis to receive an allocation of the consolidated MTC. Consider the following example:

	P	S	Consolidated
Taxable income	\$100	\$100	\$0
AMTI	100	50	150
TMT	20	10	30
Regular tax (34% rate) ..	0	34	0
AMT	\$20	\$0	\$30

Consolidated AMT computed with S's items is \$30, but consolidated AMT computed without S's items is only \$20. Thus, under the proposed allocation method S would be allocated \$10 of consolidated MTC even though S's regular tax exceeded its TMT on a separate basis. This result is appropriate because S's \$100 of taxable income did not increase the consolidated regular tax, while its \$50 of AMTI did increase consolidated TMT by \$10. The inclusion of S's items therefore increased consolidated AMT by \$10.

The Service considered other methods for allocating the consolidated MTC. Under one alternative, the group's consolidated MTC would be allocated to each member based on that member's proportionate share of the group's total adjustments and preferences. This method was rejected because it takes into account only one component that

contributes to the consolidated MTC and it could lead to distortions. For example, a member with adjustments and preferences may actually reduce consolidated AMT if the member's items increase consolidated regular tax more than they increase consolidated TMT. Nevertheless, the member would be allocated an amount of the consolidated MTC under this method.

Another alternative would allocate consolidated MTC based on the separate AMT liability of each member. The separate AMT liability of a member would be the consolidated AMT taking into account only that member's items. Under this method, each member with a separate AMT liability would be allocated a proportionate share of the consolidated MTC. This method was also rejected because it could lead to inappropriate results and would fail to make any allocation of the consolidated MTC in certain cases. For example, a group could have an AMT liability, even though none of its members has a separate AMT liability. In such a case, no member of the group would receive an allocation under this method.

The Service invites suggestions about other ways to allocate the consolidated MTC that are either simpler or more accurate than the method in the proposed regulations.

III. Proposed Amendments to the Existing Consolidated Return Regulations

The proposed regulations generally provide that references in the consolidated return regulations to the tax liability of a consolidated group are to the tax liability determined under § 1.1502-2(a). Under § 1.1502-2(a), as proposed to be amended by these regulations, consolidated tax liability is the sum of (a) the consolidated regular tax, (b) the consolidated AMT, (c) the consolidated environmental tax, and (d) the aggregate of the additional taxes provided under section 26(b)(2) (other than the taxes under sections 55 and 59A) imposed on members. However, references to the consolidated tax liability (or the tax liability of a consolidated group) in § 1.1552-1(a) through (f) are generally references to the group's regular tax liability determined in accordance with section 26(b). Similar references in § 1.1502-33(d) have already been clarified in recently-issued proposed regulations. See CO-30-92 (57 FR 53634, 1992-48 I.R.B. 27).

Section 1.1502-5, dealing with estimated tax payments by a consolidated group, is amended to reflect recent law changes with respect to the estimated tax underpayment

exceptions and to add the consolidated AMT to the estimated tax payment requirements.

Comments are solicited as to additional conforming changes to the existing consolidated return regulations that should be included in the final regulations to take into account the definition of the term "tax" under these proposed regulations.

IV. Allocations in Determining Earnings and Profits

A. Allocation of Consolidated AMT

The proposed regulations allocate consolidated AMT among the members for purposes of determining earnings and profits. Additionally, if modified consolidated regular tax exceeds consolidated TMT, the proposed regulations require that the earnings and profits of a member be increased for the member's allocable share of any consolidated MTC allowable.

The proposed regulations provide only one method for determining the amount of consolidated AMT allocated to each member of a consolidated group. The method selected for allocating the consolidated AMT among members considers the benefits that one member's AMT and ACE attributes provide in offsetting the consolidated AMT liability that would otherwise result if the member were not included in the consolidated group. For this reason, and because each member's decrease in earnings and profits based on its allocable share of the consolidated AMT is ultimately reversed by the member's allocable share of any consolidated MTC allowable in a consolidated return year, the proposed regulations do not provide for § 1.1502-33(d) AMT liability allocations.

The Service invites comments regarding its conclusion that § 1.1502-33(d) allocation rules are not necessary given the method provided in the proposed regulations for allocating the consolidated AMT liability. Comments should recommend any specific alternatives to the approach taken in the proposed regulations and should consider the appropriate treatment of departing group members under any such alternatives.

B. Allocation of Consolidated Environmental Tax

The proposed regulations allocate the consolidated environmental tax based on a member's proportionate share of the separate modified AMTI of the members for the year. Separate modified AMTI is the consolidated modified AMTI taking into account only the

member's items of income, gain, deduction, and loss.

C. Allocation of Consolidated Additional Taxes

The proposed regulations provide that the consolidated additional taxes (defined in § 1.1502-2(b)) are allocated to members in accordance with any reasonable method used by the group. See, e.g., the taxes under sections 531 and 541.

V. References to Proposed Regulations

References in the amendatory paragraphs of this Notice of Proposed Rulemaking to §§ 1.1502-19, 1.1502-21, 1.1502-22, 1.1502-32, and 1.1502-33, (or any of the paragraphs thereunder) are intended as references to those sections, as proposed to be amended by previously issued Notices of Proposed Rulemaking.

Special Analyses

It has been determined that these proposed rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these proposed rules, and therefore, an initial Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these proposed rules will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Written Comments and Public Hearing

Before these proposed regulations are adopted, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying in their entirety. Written comments, requests to appear at the public hearing, and outlines of oral comments to be presented at a public hearing scheduled for April 6, 1993, must be received by March 16, 1993. See notice of hearing published elsewhere in this issue of the *Federal Register*.

Drafting Information

The principal author of these proposed regulations is Martin Scully, Jr. of the Office of Assistant Chief Counsel, Income Tax and Accounting, Internal Revenue Service. However, other personnel from the Service and

the Treasury assisted in their development.

List of Subjects

26 CFR 1.56-0 Through 1.58-9

Income taxes, Reporting and recordkeeping requirements.

26 CFR 1.1501-1, Through 1.1504-5

Consolidated returns, Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

Paragraph 1. The authority citation for part 1 is amended by adding the following citations:

Authority: 26 U.S.C. 7805 * * *

Section 1.1502-2 also issued under 26 U.S.C. 1502. * * *

Section 1.1502-5 also issued under 26 U.S.C. 1502. * * *

Section 1.1502-33 also issued under 26 U.S.C. 1502. * * *

Section 1.1502-55 also issued under 26 U.S.C. 53 through 59 and 1502. * * *

Section 1.1552-1 also issued under 26 U.S.C. 1552. * * *

Par. 2. Section 1.56(g)-1 is amended by revising paragraph (n) to read as follows:

§ 1.56(g)-1 Adjusted current earnings.

(n) *Adjustment for adjusted current earnings of consolidated groups.* For consolidated return years for which the due date of the income tax return (without regard to extensions) is on or after [the date that is sixty days after final regulations are filed with the *Federal Register*], the rules of § 1.1502-55(b)(3) apply in computing the adjustment for adjusted current earnings of a consolidated group.

Par. 3. Section 1.1502-1 is amended by reserving paragraph (i) and adding paragraph (j) to read as follows:

§ 1.1502-1 Definitions.

(i) [Reserved]

(j) *Tax liability.* Except as provided otherwise, references relating to the "tax liability" of a consolidated group are to the consolidated tax liability determined in accordance with § 1.1502-2. However, references in § 1.1552-1 (a) through (f) (relating to the computation of earnings and profits) to the tax liability of a consolidated group are to the regular tax liability of the group, determined in accordance with section 26(b), reduced by the credits allowable under part IV of subchapter A

of the Internal Revenue Code (other than the consolidated minimum tax credit under § 1.1502-55(h)). Similarly, references to a member's tax liability determined as if it had filed separate returns under § 1.1502-33(d), or the separate return tax liability of a member under § 1.1552-1(a)(3)(ii)(b), are to the regular tax liability of the member under section 26(b), reduced by the above-referenced credits.

Par. 4. Section 1.1502-2 is revised to read as follows:

§ 1.1502-2 Computation of consolidated tax liability.

(a) *Consolidated tax liability.* The "consolidated tax liability" of a group is the excess of—

- (1) The sum of—
 - (i) The consolidated regular tax liability of the group, computed in accordance with section 26 (b);
 - (ii) The consolidated AMT, computed in accordance with § 1.1502-55;
 - (iii) The consolidated environmental tax, as defined in § 1.1552-1(h)(2); and
 - (iv) The consolidated additional taxes, as defined in paragraph (b) of this section; over
- (2) The credits allowable under part IV of subchapter A of chapter 1 of the Internal Revenue Code.

(b) *Consolidated additional taxes.* For purposes of this section, the consolidated additional taxes of a group are the sum of—

- (1) Any tax imposed by section 541 on the group or the members of the group;
- (2) Any tax imposed by section 531 on the group or the members of the group (see § 1.1502-43); and
- (3) The aggregate of the taxes specified in section 26(b)(2) imposed on members, other than the taxes imposed under section 55 (alternative minimum tax), section 59A (environmental tax), section 531 (accumulated earnings tax), and section 541 (personal holding company tax).

(c) *Effective date.* This section applies to any consolidated return year for which the due date of the income tax return (without regard to extensions) is on or after [the date that is sixty days after final regulations are filed with the *Federal Register*]. For prior years, see § 1.1502-2 (as contained in the 26 CFR edition revised as of April 1, 1992).

Par. 5. Section 1.1502-5 is revised to read as follows:

§ 1.1502-5 Estimated tax.

(a) *General rule.*—(1) *Consolidated estimated tax.* If a group files a consolidated return for two consecutive taxable years, it must make payments of estimated tax on a consolidated basis for each subsequent taxable year, until

separate returns are filed. When filing on a consolidated basis, the group is generally treated as a single corporation for purposes of section 6655 (relating to payment of estimated tax by corporations). If separate returns are filed by the members for a taxable year, the amount of any estimated tax payments made with respect to a consolidated estimated tax for the year is credited against the separate tax liabilities of the members in any reasonable manner designated by the common parent. Consolidated payments of estimated tax must be deposited with the authorized commercial depository or Federal Reserve Bank with which the common parent deposits its estimated tax payments. A statement must be attached to the payment setting forth the name, address, employer identification number, and Internal Revenue Service Center of each member.

(2) *First two consolidated return years.* For its first two consolidated return years, a group may make payments of estimated tax on either a consolidated or a separate member basis, and the amount of any separate estimated tax payments is credited against the consolidated tax liability of the group.

(b) *Addition to tax for failure to pay estimated tax under section 6655—(1) Consolidated return filed.* For its first two consolidated return years, a group may compute the amount of the penalty (if any) under section 6655 on a consolidated basis or a separate member basis, regardless of the method of payment. Thereafter, the group must compute the penalty for any consolidated return year on a consolidated basis.

(2) *Computation of penalty on consolidated basis.* (i) This paragraph (b)(2) provides rules for computing the penalty under section 6655 on a consolidated basis.

(ii) The tax shown on the return for the preceding taxable year referred to in section 6655(d)(1)(B)(ii) is, if a consolidated return was filed for that preceding year, the tax shown on the consolidated return for that preceding year or, if a consolidated return was not filed for that preceding year, the aggregate of the taxes shown on the separate returns of the common parent and any other corporation that was a member of the same affiliated group as the common parent for that preceding year.

(iii) If estimated tax was not paid on a consolidated basis, the amount of the group's payments of estimated tax for the taxable year is the aggregate of the payments made by all members for the year.

(iv) If the common parent is otherwise eligible to use the section 6655(d)(1)(B)(ii) required annual payment rule, that rule applies only if the group's consolidated return, or each member's separate return if the group did not file a consolidated return, for the preceding taxable year was a taxable year of 12 months.

(3) *Computation of penalty on separate member basis.* To compute any penalty under section 6655 on a separate member basis, for purposes of section 6655(d)(1)(B)(i), the "tax shown on the return" for the taxable year is the portion of the tax shown on the consolidated return allocable to the member under paragraph (b)(6) of this section. If the member was included in the consolidated return filed by the group for the preceding taxable year, for purposes of section 6655(d)(1)(B)(ii), the "tax shown on the return" for the preceding taxable year for any member is the portion of the tax shown on the consolidated return for the preceding year allocable to the member under paragraph (b)(6) of this section.

(4) *Consolidated payments if separate returns filed.* If the group does not file a consolidated return for the taxable year but makes payments of estimated tax on a consolidated basis, for purposes of section 6655(b)(1)(B), the "amount (if any) of the installment paid" by any member is an amount apportioned to the member in any reasonable manner designated by the common parent. If a member was included in the consolidated return filed by the group for the preceding taxable year, the amount of the member's penalty under section 6655 is computed on the separate member basis described in paragraph (b)(3) of this section.

(5) *Tax defined.* For purposes of this section, "tax" means the excess of—

(i) The sum of—

(A) The consolidated tax imposed by section 11, section 1201(a), or subchapter L of chapter 1, whichever applies;

(B) The consolidated AMT determined under § 1.1502-55; and

(C) The consolidated environmental tax defined under § 1.1552-1(h)(2); over

(ii) The credits allowable under part IV of subchapter A of chapter 1 of the Internal Revenue Code against the consolidated taxes in paragraphs (b)(5)(i) (A), (B), and (C) of this section.

(6) *Rules for allocation of consolidated tax liability.* For purposes of this section, the tax shown on a consolidated return shall be allocated to the members of the group by allocating—

(i) Any tax described in paragraph (b)(5)(i)(A) of this section, net of

allowable credits under paragraph (b)(5)(ii) (other than the allowable consolidated MTC defined in § 1.1502-55(h)), under the method that the group has elected pursuant to section 1552 and § 1.1502-33(d);

(ii) Any allowable consolidated MTC (as defined in § 1.1502-55(h)) in accordance with the requirements of § 1.1552-1(g);

(iii) Any consolidated AMT described in paragraph (b)(5)(i)(B) of this section in accordance with the requirements of § 1.1552-1(g); and

(iv) Any consolidated environmental tax described in paragraph (b)(5)(i)(C) of this section in accordance with the requirements of § 1.1552-1(h).

(c) *Examples.* The provisions of this section are illustrated by the following examples.

Example 1. Corporations P and S1 file a consolidated return for the first time for calendar year 1992. P and S1 also file consolidated returns for 1993 and 1994. Under paragraph (a)(2) of this section, for 1992 and 1993 P and S1 may pay estimated tax on either a separate or consolidated basis. Under paragraph (a)(1) of this section, for 1994 the group must pay its estimated tax on a consolidated basis. In determining whether P and S1 come within the exception provided in section 6655(d)(1)(B)(ii) for 1994, the "tax shown on the return" is the tax shown on the consolidated return for 1993.

Example 2. Corporations P, S1, and S2 file a consolidated return for the first time for calendar year 1992 and file their second consolidated return in 1993. S2 ceases to be a member of the group on September 15, 1994. Under paragraph (b)(2) of this section, in determining whether the group (which no longer includes S2) comes within the exception provided in section 6655(d)(1)(B)(ii) for 1994, the "tax shown on the return" is the tax shown on the consolidated return for 1993.

Example 3. Corporations P and S1 file a consolidated return for the first time for calendar year 1992 and file their second consolidated return in 1993. Corporation S2 becomes a member of the group on July 1, 1994, and joins in the filing of the consolidated return for 1994. Under paragraph (b)(2) of this section, in determining whether the group (which now includes S2) comes within the exception provided in section 6655(d)(1)(B)(ii) for 1994, the "tax shown on the return" is the tax shown on the consolidated return for 1993. Any tax of S2 for any separate return year is not included as a part of the "tax shown on the return" for purposes of applying section 6655(d)(1)(B)(ii).

Example 4. Corporations X and Y file consolidated returns for the calendar years 1992 and 1993 and separate returns for 1994. Under paragraph (b)(3) of this section, in determining whether X or Y comes within the exception provided in section 6655(d)(1)(B)(ii) for 1994, the "tax shown on the return" is the amount of tax shown on the consolidated return for 1993 allocable to

X and to Y in accordance with paragraph (b)(6) of this section.

(d) *Cross reference.* For provisions relating to quick refunds of corporate estimated tax payments, see § 1.1502-78 and §§ 1.6425-1 through 1.6425-3.

(e) *Effective date.* This section applies to any taxable year for which the due date of the income tax return (without regard to extensions) is on or after [the date that is sixty days after final regulations are filed with the Federal Register]. For prior years, see § 1.1502-5 (as contained in the 26 CFR edition revised as of April 1, 1992).

Par. 6. Proposed § 1.1502-33, published in the Federal Register on November 12, 1992 (57 FR 53634), is amended by adding the following sentence at the end of paragraph (d)(1)(i) to read as follows:

§ 1.1502-33 Earnings and profits.

(d) * * *

(1) * * *

(i) * * * See paragraphs (g), (h), and (j) of § 1.1552-1 for rules relating to the allocation of the consolidated AMT (as computed under § 1.1502-55), the consolidated environmental tax (defined in § 1.1552-1 (h)), and the consolidated additional taxes (defined in § 1.1502-2 (b)) among members of the group.

Par. 7. Section 1.1502-55 is added to read as follows:

§ 1.1502-55 Computation of alternative minimum tax of consolidated groups.

(a) *In general.*—(1) *Overview.* This section provides rules for determining a consolidated group's alternative minimum tax liability (its consolidated AMT) and for allocating various consolidated AMT attributes to members of the group. See also section 1561.

(2) *Principles.* The consolidated AMT is determined under an approach that generally parallels the determination of the group's consolidated regular tax liability. The statutory scheme and definitions in sections 55 through 59 apply in determining consolidated AMT. For example, section 55(b)(1) defines tentative minimum tax (TMT),

and that term is modified under this section and referred to as "consolidated TMT." Generally, this section provides further refinements to the "consolidated" AMT terms only where necessary to illustrate the adjustments required to compute the consolidated AMT or to allocate consolidated AMT attributes among members.

(b) *Consolidated AMT.*—(1) *In general.* Consolidated alternative minimum taxable income (AMTI), computed in accordance with the principles of §§ 1.1502-11 and 1.1502-12 (relating to the computation of consolidated taxable income), equals consolidated pre-adjustment AMTI—

(i) Increased or decreased by the consolidated adjustment for adjusted current earnings (consolidated ACE adjustment), computed under paragraph (b)(3) of this section; and

(ii) Decreased by the consolidated alternative tax net operating loss deduction (consolidated ATNOL deduction), computed under paragraph (b)(4) of this section.

(2) *Consolidated pre-adjustment AMTI.*—(i) *In general.* Consolidated pre-adjustment AMTI is determined in accordance with the principles of § 1.1502-11, taking into account the adjustments and preferences provided in sections 56 (excluding the section 56(g) adjustment), 57, and 58. The consolidated NOL deduction, however, is not taken into account in computing consolidated pre-adjustment AMTI. In determining consolidated pre-adjustment AMTI, a consolidated appreciated property charitable deduction preference must be computed. The consolidated appreciated property charitable deduction preference is the amount by which the consolidated charitable contribution deduction determined under the principles of § 1.1502-24, computed by taking into account the adjustments provided in sections 56 (excluding the section 56(g) adjustment) and 58, would be reduced if all capital gain property of the group were taken into account at its adjusted basis.

(ii) *Separate pre-adjustment AMTI.*—(A) *In general.* In computing consolidated pre-adjustment AMTI,

each member must compute its separate pre-adjustment AMTI. The separate pre-adjustment AMTI of a member is determined in accordance with the principles of § 1.1502-12, taking into account the adjustments and preferences provided in sections 56 (excluding the section 56(g) adjustment), 57, and 58.

(B) *Computation of member's section 57(a)(2) preference for excess IDCs.*—(1) *In general.* In computing separate pre-adjustment AMTI, a member's preference under section 57(a)(2) is the member's allocable share of the consolidated IDC preference. A member's allocable share of the consolidated IDC preference is determined by multiplying the consolidated IDC preference by a fraction, the numerator of which is the separate IDC preference of the member, and the denominator of which is the sum of the separate IDC preferences of all members that have a separate IDC preference.

(2) *Consolidated IDC preference.* The consolidated IDC preference is the excess of—

(i) The aggregate of each member's excess IDCs (as defined in section 57(a)(2)(B)) arising in the consolidated return year; over

(ii) 65 percent of the consolidated net income arising during the consolidated return year from all oil, gas, and geothermal properties (as defined in section 57(a)(2)(C)) of the group's members.

(3) *Separate IDC preference.* A member's separate IDC preference is the amount, if any, by which the member's excess IDCs arising in the taxable year from all properties of the member is greater than 65 percent of the net income from oil, gas and geothermal properties of the member for the taxable year.

(iii) *Example.* The following example illustrates the computation of consolidated pre-adjustment AMTI under this paragraph (b)(2).

Example. (i) P, S1, and S2 file a consolidated return, and have the following items of income and deduction for AMT purposes.

	P	S1	S2	Consolidated
Income	\$1,000	\$1,000	\$1,000	
Depreciation	(300)	(100)	(200)	
Section 57(a)(2) IDC preference	240	0	180	
Section 57(a)(5) tax-exempt interest preference	100	50	0	
Separate pre-adjustment AMTI	\$1,040	\$950	\$980	\$2,950

	P	S1	S2	Consolidated
AMT capital gains	300	150	100	550
Consolidated pre-adjustment AMTI				\$3,500

(ii) Under paragraph (b)(2)(ii)(B) of this section, the section 57(a)(2) IDC preference for each of the members is computed as follows:

	P	S1	S2	Consolidated
IDCs	\$460	\$100	\$395	\$955
65% of net income from oil, gas, and geothermal properties	(160)	(200)	(195)	(555)
IDC preference	\$300	\$0	\$200	\$400

(iii) The \$400 consolidated IDC preference is allocated among the members that have a separate IDC preference (P and S2). Each member's allocable share of the consolidated IDC preference, which is included in its separate pre-adjustment AMTI, is computed as follows:

P			
\$400 consolidated IDC preference	×	\$300, separate IDC preference	
		\$500, sum of separate IDC preferences of all members	= \$240

S2			
\$400 consolidated IDC preference	×	\$200, separate IDC preference	
		\$500, sum of separate IDC preferences of all members	= \$160

(3) *Consolidated ACE adjustment*—(i) *In general.* In computing consolidated AMTI, subject to the limitation of paragraph (b)(3)(iii) of this section, consolidated pre-adjustment AMTI is increased (or decreased) by 75 percent of the excess (or deficit) for the consolidated return year of—

(A) The consolidated ACE (as defined in paragraph (b)(3)(ii) of this section) for the year; over

(B) The consolidated pre-adjustment AMTI (as defined in paragraph (b)(2) of this section) for the year.

(ii) *Consolidated ACE*—(A) *In general.* Consolidated ACE is determined in accordance with the principles of § 1.1502-11, taking into account the adjustments and preferences provided in sections 56, 57, and 58. The consolidated NOL deduction and the consolidated section 247 deduction, however, are not taken into account in computing consolidated ACE.

(B) *Separate ACE.* In computing consolidated ACE, each member must

compute its separate ACE. The separate ACE of a member is the separate pre-adjustment AMTI of the member, as defined in paragraph (b)(2)(ii) of this section, adjusted as provided in section 56(g) and § 1.56(g)-1.

(iii) *Limitation on consolidated negative ACE adjustments*—(A) *In general.* Under the principles of section 56(g)(2)(B), the amount of the consolidated negative ACE adjustment for any consolidated return year is limited to the sum of—

(1) The consolidated return year cumulative ACE adjustment (as defined in paragraph (b)(3)(ii)(B)(1) of this section); and

(2) The separate return year cumulative ACE adjustment (as defined in paragraph (b)(3)(iii)(B)(2) of this section).

(B) *Definitions*—(1) *Consolidated return year cumulative ACE adjustment.* The consolidated return year cumulative ACE adjustment equals the excess, if any, of the consolidated positive ACE adjustments for prior consolidated return years, over the sum of—

(i) Consolidated negative ACE adjustments for prior consolidated return years (other than any portion of those consolidated negative ACE adjustments attributable to separate return year positive ACE adjustments, as determined under paragraph (b)(3)(iii)(C) of this section); and

(ii) Consolidated positive ACE adjustments for prior consolidated return years apportioned to a corporation that ceases to be a member and carried to its separate return years in accordance with paragraph (e)(2) of this section (or, for consolidated return years for which the due date of the income tax return (without regard to extensions) is before [the date that is sixty days after final regulations are filed with the Federal Register], in accordance with any reasonable method used by the group).

(2) *Separate return year cumulative ACE adjustment.* The separate return year cumulative ACE adjustment equals the excess, if any, of the separate return year positive ACE adjustments of the members for prior taxable years (as defined in paragraph (b)(3)(iii)(B)(3) of this section), over the sum of—

(i) The separate return year negative ACE adjustments of the members for prior taxable years (as defined in paragraph (b)(3)(iii)(B)(4) of this section); and

(ii) The portion of the consolidated negative ACE adjustments of the group for prior consolidated return years attributable to prior year separate return year positive ACE adjustments of the members (as determined under paragraph (b)(3)(iii)(C) of this section).

(3) *Separate return year positive ACE adjustments.* Separate return year positive ACE adjustments are—

(i) For each member, the increases in AMTI for prior separate return years (other than years for which the member joined in the filing of a consolidated return) due to the ACE adjustment under section 56(g); and

(ii) For any prior separate return years for which a member joined in the filing of a consolidated return with another group, the member's allocable share of that group's consolidated positive ACE adjustments determined under paragraph (e)(2) of this section (or, for taxable years for which the due date of the income tax return (without regard to extensions) is before [the date that is sixty days after final regulations are filed with the Federal Register], determined in accordance with any reasonable method used by that other group).

(4) *Separate return year negative ACE adjustments.* Separate return year negative ACE adjustments include the aggregate decreases in AMTI for prior separate return years (other than years for which the member joined in the

filing of a consolidated return) due to the ACE adjustment under section 56(g).

(C) *Consolidated negative ACE adjustments attributable to separate return year positive ACE adjustments.* The portion of a consolidated negative ACE adjustment attributable to separate return year positive ACE adjustments is equal to the consolidated negative ACE adjustment multiplied by a fraction, the numerator of which is the separate return year cumulative ACE adjustment (as of the beginning of the consolidated return year) and the denominator of which is the aggregate of the separate return year cumulative ACE adjustment and the consolidated return year cumulative ACE adjustment (both determined as of the beginning of the consolidated return year).

(4) *Consolidated ATNOL deduction.* After taking into account the group's consolidated ACE adjustment for the year, the group takes the consolidated ATNOL deduction into account in computing consolidated AMTI. Subject to applicable limitations (e.g., section 382) and the provisions of section 56(d), the consolidated ATNOL deduction is the aggregate of the consolidated ATNOL carryovers and carrybacks determined under the principles of § 1.1502-21. The consolidated ATNOL for a consolidated return year is the consolidated net operating loss determined under the principles of § 1.1502-21(e) for the year, taking into account the adjustments and preferences provided in sections 56, 57, and 58 for that year.

(5) *Example.* The following example illustrates certain general principles of this paragraph (b).

Example. (i) Separate returns. P and S file separate returns. P's and S's items of income and deduction for regular tax (RT), AMT, and ACE purposes, and P's and S's tax liability are provided below. The effects of the lower section 11 brackets and the section 55(d) AMT exemption amount are ignored.

(A) P has pre-adjustment AMTI of \$700 and ACE of \$900, resulting in a \$150 positive ACE adjustment (75 percent of the difference between P's ACE and P's pre-adjustment AMTI). P's ATNOL deduction (\$100) reduces its AMTI to \$750. P's TMT is therefore \$150 (20 percent of AMTI). Thus, P has an AMT liability of \$48, the difference between P's TMT (\$150) and P's regular tax (\$102).

P	RT	AMT	ACE
Gross income	\$1,000	\$1,000	\$1,000
Depreciation	(500)	(300)	(100)
Pre-adjustment AMTI		700	
ACE			900
ACE adjustment		150	
NOL deduction	(200)		
ATNOL deduction		(100)	
Taxable income	300		
AMTI		750	
TMT (20%)		150	
RT liability (34%)	102		
AMT		48	

(B) S has pre-adjustment AMTI of \$900 and ACE of \$800, resulting in a \$75 negative ACE adjustment (75 percent of the difference between S's pre-adjustment AMTI and S's ACE. Assume that S may use the negative adjustment because of prior year positive ACE adjustments). S's ATNOL deduction (\$200) reduces its AMTI to \$625. Thus, S has no AMT liability because S's regular tax (\$306) exceeds its TMT (\$125).

S	RT	AMT	ACE
Gross income	\$1,000	\$1,000	\$1,000
Depreciation	0	(100)	(200)
Pre-adjustment AMTI		900	
ACE			800
ACE adjustment		(75)	
NOL deduction	(100)		
ATNOL deduction		(200)	
Taxable income	900		
AMTI		625	
TMT (20%)		125	
RT liability (34%)	306		
AMT		0	

(ii) *Consolidated return filed.* (A) If P and S instead elect to file a consolidated return, the group would have the following results:

P group	P	S	Consolidated
RT			
Gross income	\$1,000	\$1,000	\$2,000
Depreciation	(500)	0	(500)
Aggregate separate taxable income	500	1,000	1,500
Consolidated NOL deduction			(300)

P group RT	P	S	Consolidated
Consolidated taxable income			1,200
Consolidated RT (34%)			408

AMT	P	S	Consolidated
Gross income	\$1,000	\$1,000	\$2,000
Depreciation	(300)	(100)	(400)
Consolidated pre-adjustment AMTI	\$700	\$900	\$1,600
ACE depreciation adjustment	200	(100)	100
Consolidated ACE	\$900	\$800	\$1,700
Consolidated ACE adjustment			75
Consolidated ATNOL deduction			(300)
Consolidated AMTI			\$1,375
Consolidated TMT (20%)			\$275
Consolidated AMT			\$0

(B) The P group has consolidated pre-adjustment AMTI of \$1,600. In addition, the group has consolidated ACE of \$1,700, resulting in a \$75 positive consolidated ACE adjustment (75 percent of the difference between the group's ACE and the group's pre-adjustment AMTI). The consolidated ATNOL deduction reduces consolidated AMTI to \$1,375. The consolidated TMT is \$275. Thus, the P group has no consolidated AMT liability because its consolidated regular tax (\$408) exceeds its consolidated TMT (\$275).

(c) *Consolidated alternative minimum tax foreign tax credit.* [Reserved]

(d) *Separate return limitation years.* [Reserved]

(e) *Separate return years—(1) Carryovers and carrybacks of consolidated AMT attributes to separate return years—(i) In general.* This paragraph (e)(1) provides principles under which various consolidated AMT attributes are allocated among members of a consolidated group, generally for purposes of apportioning the attribute to a corporation that ceases to be a member. The apportionment of consolidated AMT attributes that have regular tax counterparts is based on the principles applicable to the regular tax counterparts. See e.g., § 1.1502-21(b) (principles applicable to consolidated net operating losses).

(ii) *Examples.* The following examples illustrate the application of this paragraph (e)(1).

Example 1. Allocation of consolidated ATNOL. (i) P, S1, and S2 are members of a consolidated group. In 1993, the group has a consolidated ATNOL of \$100. P has a separate ATNOL of \$150, S1 has a separate ATNOL of \$50, and S2 has separate AMTI of computing the consolidated ATNOL, taking into account only the member's income, gain, deduction, and loss, including the member's losses and deduction actually absorbed by the group in the taxable year (whether or not

absorbed by the member). See § 1.1502-21(b)(2)(iv).

(ii) Under this paragraph (e)(1), the portion of the consolidated ATNOL allocable to each member is determined in accordance with the principles of the regulations relating to the carryover and carryback of the consolidated NOL to separate return years. See § 1.1502-21(b). Thus, the portion of the consolidated ATNOL allocable to P and S1 is determined by multiplying the consolidated ATNOL by a fraction, the numerator of which is the member's separate ATNOL and the denominator of which is the sum of all member's separate ATNOLs. The portion of the consolidated ATNOL allocable to P is \$75 (\$100 multiplied by \$150/\$200). The portion of the consolidated ATNOL allocable to S1 is \$25 (\$100 multiplied by \$50/\$200). S2 is not allocated a portion of the consolidated ATNOL because S2 had no separate ATNOL.

Example 2. Allocation of consolidated ACE net capital loss. (i) P, S1, and S2 are members of a consolidated group. In 1993, the group has a consolidated ACE net capital loss of \$210. P has a separate ACE net capital loss of \$90, S1 has a separate ACE net capital gain of \$60, and S2 has a separate ACE net capital loss of \$180. The separate ACE net capital losses for P and S2 are determined by computing the consolidated ACE net capital loss by taking into account only the member's gains and losses, including the members' losses actually absorbed by the group in the taxable year (whether or not absorbed by the member). See §§ 1.1502-22(b)(3) and 1.1502-21(b)(2)(iv).

(ii) Under this paragraph (e)(1), the portion of the consolidated ACE net capital loss allocable to each member is determined in accordance with the principles of the regulations relating to the carryover and carryback of the consolidated net capital loss to separate return years. See § 1.1502-22(b). Thus, the portion of the consolidated ACE net capital loss allocable to P and S2 is determined by multiplying the consolidated ACE net capital loss by a fraction, the numerator of which is the member's separate ACE net capital loss and the denominator of which is the sum of all member's separate

ACE net capital losses. The portion of the consolidated ACE net capital loss allocable to P is \$70 (\$210 multiplied by \$90/\$270). The portion of the consolidated ACE net capital loss allocable to S2 is \$140 (\$210 multiplied by \$180/\$270). S1 is not allocated a portion of the consolidated ACE net capital loss because S1 had no separate ACE net capital loss.

(2) *Carryover of consolidated positive ACE adjustments to separate return years—(i) In general.* If a corporation ceases to be a member, the portion of the consolidated positive ACE adjustments allocated to the corporation is taken into account in its separate return years in accordance with the principles of §§ 1.56 (g)-1 (a)(2) and 1.1502-21 (b). Any separate return year cumulative ACE adjustment attributable to a corporation as of the close of the taxable year in which the corporation ceases to be a member is also taken into account in its separate return year.

(ii) *Portion of consolidated positive ACE adjustments allocable to a member—(A) In general.* The portion of the consolidated positive ACE adjustments allocated to a member is the consolidated return year cumulative ACE adjustment as of the close of the consolidated return year in which the corporation ceases to be a member, multiplied by a fraction. The numerator of the fraction is the separate cumulative ACE adjustment of the member as of the close of the consolidated return year in which the corporation ceases to be a member, and the denominator of the fraction is the sum of the separate cumulative ACE adjustments of all members having separate cumulative ACE adjustments as of the close of the consolidated return year in which the corporation ceases to be a member.

(B) *Separate cumulative ACE adjustment.* The separate cumulative ACE adjustment of a member is the consolidated return year cumulative ACE adjustment, if any, taking into account only the member's items of income, gain, deduction, and loss, including the member's losses and deductions actually absorbed by the group (whether or not absorbed by the member).

(f) *Deferral and restoration of gain or loss.* The principles of the Internal Revenue Code and regulations that affect the timing of inclusion of items in consolidated taxable income generally apply for purposes of computing consolidated pre-adjustment AMTI and consolidated ACE. See, e.g., § 1.1502-13. Applicable adjustments and preferences provided in sections 56, 57, and 58 must be taken into account.

(g) *Stock basis adjustments in computing consolidated AMT—(1) Parallel approach.* The principles set forth in §§ 1.1502-19 and 1.1502-32 for determining the regular tax basis in (or the regular tax excess loss account with respect to) a member's stock generally apply in determining both the corresponding AMT stock basis (or AMT excess loss account) and ACE stock basis (or ACE excess loss account).

(2) *Modifications to regular tax stock basis principles in computing consolidated pre-adjustment AMTI and consolidated ACE.* The following modifications to the stock basis adjustment principles of §§ 1.1502-19 and 1.1502-32 apply for purposes of

computing AMT stock basis (or AMT excess loss account) used in determining consolidated pre-adjustment AMTI and ACE stock basis (or ACE excess loss account) used in determining consolidated ACE—

(i) Adjustments may be determined annually but are required only if a difference between the regular tax and AMT or ACE basis in (or excess loss with respect to) a member's stock will affect the tax liability of any person (e.g., on a sale of the stock);

(ii) The annual reporting requirements of § 1.1502-32(g) do not apply under the AMT or ACE systems;

(iii) In determining the adjustments under § 1.1502-32(b)(3)(i), any section 57 preference items includible in AMTI are not taken into account (while tax-exempt interest described in section 57(a)(5) is not taken into account in determining the adjustments for AMTI under § 1.1502-32(b)(3)(i), it does result in a positive stock basis adjustment under § 1.1502-32(b)(3)(ii));

(iv) A member's portion of any disallowed consolidated negative ACE adjustment for a consolidated return year is treated as a non-capital, non-deductible expense under § 1.1502-32(b)(3)(iii) for purposes of determining the adjustments to another member's AMT basis in (or excess loss account with respect to) the stock of the member; and

(v) Solely for purposes of computing adjustments to the ACE basis in (or ACE excess loss account with respect to) the stock of a member, the member's excess

of ACE deductions over ACE income for a consolidated return year is treated as a tax loss under § 1.1502-32(b)(3)(i) that is absorbed in the same year that it arises.

(3) *Tax payments and refunds.* The amount of any section 275 tax liability or refund of federal income tax taken into account under §§ 1.1502-19 and 1.1502-32 for regular tax purposes is also taken into account in computing AMT and ACE stock basis (or excess loss account).

(4) *Example.* The following example illustrates the principles of this paragraph (g).

Example. (i) *Background.* (A) Corporations P and S file a consolidated return. On January 1, 1994, P has a \$0 basis in S's stock. S has gross income for regular tax, AMT, and ACE purposes of \$10,000 in 1994 and a loss from operations (before taking into account its depreciation deduction) for regular tax, AMT, and ACE purposes of \$5,000 in 1995. The P group's tax liability (whether attributable to the regular tax or the AMT) is solely attributable to S, and the consolidated regular tax liability and consolidated AMT liability allocations under § 1.1552-1 are the same as the separate liabilities of S. Finally, the effects of the lower section 11 tax rate brackets and the section 55(d) AMT exemption amount are ignored.

(B) On December 31, 1995, P sells a portion of the S stock. Under paragraph (g)(2)(i) of this section, no adjustments to P's basis in S's stock are required for purposes of computing consolidated pre-adjustment AMTI and consolidated ACE in 1994. However, because there was a stock sale in 1995, P's basis in S's stock must be adjusted for AMT and ACE purposes in 1995 as follows:

	RT	AMT	ACE
(ii) Stock basis adjustments for 1994—(A) Adjustments—			
Gross income	\$10,000	\$10,000	\$10,000
Depreciation	(5,000)	(4,000)	(3,000)
Taxable income	5,000		
Pre-adjustment AMTI		6,000	
ACE			7,000
ACE adjustment		750	
AMTI		6,750	
TMT (20%)		1,350	
RT liability (34%)	1,700		
AMT		0	
(B) Stock basis adjustments—			
P's basis in S's stock on 1/1/94	0	0	0
§ 1.1502-32(b)(3)(i)	5,000	6,750	7,000
§ 1.1502-32(b)(3)(iii)	(1,700)	(1,700)	(1,700)
P's Basis in S stock on 12/31/94	3,300	5,050	5,300
(iii)(A) Stock basis adjustments for 1995			
Gross income	(5,000)	(5,000)	(5,000)
Depreciation	(5,000)	(4,000)	(3,000)
Taxable income	(10,000)		
Pre-adjustment AMTI		(9,000)	
ACE			(8,000)
ACE adjustment		750	
AMTI		(8,250)	
TMT (20%)		0	
RT liability (34%)	0		
AMT		0	

Because of the section 56(d) 90-percent limitation on the amount of AMTI that may be offset by an ATNOL deduction, only \$6,075 of the \$8,250 ATNOL for 1995 is carried back to 1994 under the principles of § 1.1502-21(b). Thus, since all \$5,000 of the 1994 regular taxable income was offset by the 1995 NOL, but only \$6,075 of the 1994 AMTI was offset by the 1995 ATNOL, an AMT liability for 1994 of \$135 results. Accordingly, only \$1,565 of the \$1,700 Federal income taxes paid in 1994 is refunded in 1995.

(B) Stock basis adjustments—

	P's basis in S stock on 12/31/94	\$3,300	\$5,050	\$5,300			
§ 1.1502-32(b)(3)(i)					(5,000)	(6,075)	(8,000)
§ 1.1502-32(b)(3)(ii)					1,565	1,565	1,565
§ 1.1502-32(b)(3)(iii)					(0)	(0)	(0)
P's basis (ELA) in S stock when sold on 12/31/95					\$(135)	\$540	\$(1,135)

(h) **Consolidated MTC—(1) Overview.** A group's consolidated minimum tax credit (MTC) is generally based on the consolidated adjusted net minimum tax for prior years. Adjustments are made to take into account a member's adjusted net minimum tax from prior separate return years. See paragraphs (h) (2) through (4) of this section. Adjustments are also made for the portion of the consolidated adjusted net minimum tax that is allocable to a corporation that ceases to be a member (and thus may be carried to the member's separate return years). See paragraph (h)(6) of this section.

(2) **Computation of the consolidated MTC.** The consolidated MTC available as of the beginning of any consolidated return year is the sum of—

(i) The consolidated return year MTC (as defined in paragraph (h)(3) of this section); and

(ii) The separate return year MTC (as defined in paragraph (h)(4) of this section).

(3) **Consolidated return year MTC—(i) General rule.** The consolidated return year MTC is the excess (if any) of—

(A) The consolidated adjusted net minimum tax (as defined in paragraph (h)(3)(ii) of this section) for all prior consolidated return years beginning after 1986; over

(b) The sum of—

(1) The amount of the consolidated adjusted net minimum tax for prior consolidated return years that is allowable as a consolidated MTC in prior years; and

(2) The amount of the consolidated adjusted minimum tax for prior consolidated return years that is allowed to be carried to a separate return year of a member in accordance with paragraph (h)(6) of this section (or, for consolidated return years for which the due date of the income tax return (without regard to extensions) is before [the date that is sixty days after the final regulations are filed with the Federal Register], in accordance with any reasonable method used by the group).

(ii) **Consolidated adjusted net minimum tax—(A) In general.** Except as

provided in paragraphs (h)(3)(ii) (B) and (C) of this section, consolidated adjusted net minimum tax is the amount of the consolidated AMT.

(B) **Exception for taxable years beginning after 1986 and before 1990.** For taxable years beginning after December 31, 1986, and before January 1, 1990, consolidated adjusted net minimum tax is the amount of the consolidated AMT, reduced by the amount that would be the consolidated AMT for the taxable year if the only adjustments and tax preference items were those in section 56(c)(3), section 57(a)(1), section 57(a)(5), and section 57(a)(6).

(C) **Special rule for groups with consolidated disallowed section 29 or section 28 credits.** The amounts determined under paragraph (h)(3)(ii) (A) and (B) of this section for a taxable year are increased by the amount, if any, of a group's consolidated disallowed section 29 credit or consolidated disallowed section 28 credit for the year. For this purpose, the consolidated disallowed section 29 credit is the sum of the section 29 credits of all the members that are not allowable under section 29 solely by reason of the application of section 29(b)(6)(B). The consolidated disallowed section 28 credit is the sum of the section 28 credits of all the members that are not allowable under section 28 solely by reason of the application of section 28 (d)(2)(B).

(4) **Separate return year MTC—(i) In general.** The separate return year MTC is, subject to applicable limitations (e.g., section 383), the excess (if any) of—

(A) The adjusted net minimum tax (as defined in section 53 (d)) for all prior separate return years of the group members beginning after 1986; over

(B) The sum of—

(1) The amount allowable as an MTC for such prior separate return years; and

(2) The amount described in paragraph (h)(4)(i)(A) of this section that is allowable as a consolidated MTC in prior years.

(ii) **Adjusted net minimum tax arising in another consolidated group.** In the

case of a member that filed a consolidated return in a prior year with another group, the amount described in paragraph (h)(4)(i)(A) of this section includes any consolidated MTC of another group that is attributable to that member and that is apportioned to it and available in the consolidated return year in accordance with paragraph (h)(6) of this section (or, for taxable years for which the due date of the income tax return (without regard to extensions) is before [the date that is sixty days after final regulations are filed with the Federal Register], in accordance with any reasonable method used by that other group).

(iii) **Limitation on portion of separate return year MTC arising in separate return limitation years.** [Reserved]

(5) **Limitation on allowable consolidated MTC—(1) In general.** The available consolidated MTC allowable under this paragraph (h) for any consolidated return year is limited to the excess (if any) of—

(A) The modified consolidated regular tax liability (as defined in paragraph (h)(5)(ii) of this section) for the year; over

(B) The consolidated TMT for the year.

(ii) **Modified consolidated regular tax liability.** Modified consolidated regular tax liability is the consolidated regular tax liability, computed in accordance with section 26 (b), reduced by the sum of the consolidated credits (other than the consolidated MTC) allowable under part IV of subchapter A of chapter 1 of the Internal Revenue Code.

(6) **Carryover of the consolidated MTC to separate return years—(i) In general.** When a corporation ceases to be a member of a group, the group is required to allocate to that corporation a portion of the group's consolidated MTC. The allocation is generally based on the corporation's contributions to the group's consolidated adjusted net minimum tax during the consolidated return years for which the corporation was a member of the group. The amount of the consolidated MTC properly allocable to a departing member is taken

into account by the member in its succeeding separate return years.

(ii) *Consolidated MTC allocable to a member*—(A) *In general.* The amount of the consolidated MTC allocable to a corporation equals the corporation's allocable share of the consolidated MTC available as of the beginning of the consolidated return year in which the corporation ceases to be a member of a group—

(1) Increased by the corporation's allocable share of the consolidated adjusted net minimum tax, if any, for the consolidated return year in which the corporation ceases to be a member (as determined under paragraph (h)(6)(iii) of this section); and

(2) Decreased by the corporation's allocable share of any allowable consolidated MTC for the consolidated return year in which the corporation ceases to be a member (as determined under paragraphs (h) (6)(vi) and (7) of this section).

(B) *Reference to rules for determining a member's allocable share.* For purposes of determining a corporation's allocable share of the consolidated MTC available as of the beginning of the consolidated return year in which the corporation ceases to be a member of a group (as described in paragraph (h)(6)(ii)(A) of this section), the rules of paragraph (h)(6)(iii) of this section apply to determine the corporation's allocable share of consolidated adjusted net minimum tax in each prior consolidated return year, and the rules of paragraphs (h) (6)(vi) and (7) of this section apply to determine the corporation's allocable share of any allowable consolidated MTC in prior consolidated return years. The rules of paragraph (h)(7) of this

section are also applicable in determining the remaining amount of the departing member's separate return year MTC (from years prior to joining the consolidated group) that is taken into account in succeeding separate return years.

(iii) *Member's allocable share of consolidated adjusted net minimum tax*—(A) *In general.* A member's allocable share of the consolidated adjusted net minimum tax for a consolidated return year is determined by multiplying the consolidated AMT for the year by a fraction, the numerator of which is the separate adjusted AMT of the member (as defined in paragraph (h)(6)(iv) of this section) for the year, and the denominator of which is the sum of the separate adjusted AMTs of each member for the year.

(B) *Special allocation rule for groups with consolidated disallowed section 29 or section 28 credits*—(1) *General rule.* In a consolidated return year in which the group has a consolidated disallowed section 29 or 28 credit, in addition to the amount determined under paragraph (h)(6)(iii)(A) of this section, a member's allocable share of consolidated adjusted net minimum tax for the year includes its allocable share of the consolidated disallowed section 29 or 28 credit.

(2) *Allocable share of disallowed credit.* A member's allocable share of the consolidated disallowed section 29 credit or consolidated disallowed section 28 credit for a consolidated return year is determined by multiplying the consolidated disallowed section 29 credit amount (or the consolidated disallowed section 28 credit amount) for the year by a fraction. The numerator of the fraction is the total

section 29 credits (or section 28 credits) of the member for the taxable year, and the denominator is the total section 29 credits (or section 28 credits) of all members for the year.

(iv) *Separate adjusted AMT*—(A) *In general.* Subject to paragraph (h)(6)(iv)(B) of this section, the separate adjusted AMT of a member for a consolidated return year is the excess (if any) of—

(1) The consolidated AMT for the year; over

(2) The consolidated AMT for the year; computed by excluding the member's items of income, gain, deduction, and loss, and the member's credits.

(B) *Special rule in computing separate adjusted AMT.* If, in computing a member's separate adjusted AMT, there is no consolidated AMT computed without that member's items (i.e., the amount in paragraph (h)(6)(iv)(A)(2) of this section is zero), the amount determined under paragraph (h)(6)(iv)(A) of this section must be increased by the excess (if any) of the consolidated regular tax computed without the member's items, over consolidated TMT computed without the member's items.

(v) *Examples.* The provisions of paragraphs (h)(1) through (6)(iv) of this section are illustrated by the following examples. In the examples, corporations P, S1, and S2 file a consolidated return. In each example, the group has no consolidated disallowed section 28 of section 29 credits for the year. The effects of the lower section 11 brackets and the section 55(d) exemption amount are ignored.

EXAMPLE 1.—(i) 1993 REGULAR TAX AND AMT COMPUTATION

	P	S1	S2	Consolidated
Taxable income	\$1,200	\$200	\$3,000	\$4,000
Adjustments and preferences	1,800	100	2,000	3,900
AMTI	3,000	(100)	5,000	7,900
TMT (20%)				1,580
RT liability (34%)				1,360
AMT				220

(ii) Computation of separate adjusted AMT.

(A) Computation of Consolidated AMT Excluding P's Items

Taxable income	\$2,800
Adjustments and preferences	2,100
AMTI	4,900
TMT (20%)	980
RT liability (34%)	952

AMT 28
Consolidated AMT computed without P's items is \$28. Accordingly, P's separate adjusted AMT is \$192 (\$220-\$28).

(B) Computation of Consolidated AMT Excluding S1's Items

Taxable income	\$4,200
Adjustments and preferences	3,800

AMTI	8,000
TMT (20%)	1,600
RT liability (34%)	1,428
AMT	172

Consolidated AMT computed without S1's items is \$172. Accordingly, S1's separate adjusted AMT is \$48 (\$220-\$172).

(C) Computation of Consolidated AMT Excluding S2's Items:

Taxable income	\$1,000
Adjustments and preferences	1,900
AMTI	2,900
TMT (20%)	580
RT liability (34%)	340
AMT	240

Consolidated AMT computed without S2's items is \$240. Because consolidated AMT computed with S2's items is more than that amount computed without S2's items, S2 has no separate adjusted AMT.

(iii) Allocation of 1993 consolidated adjustment net minimum tax to members of group. Under paragraph (h)(6)(iii)(A) of this section, the amount of the 1993 consolidated adjusted net minimum tax allocable to P and S1 is determined as follows (S2 is allocated no portion of the 1993 consolidated adjusted net minimum tax because S2 has no separate adjusted AMT):

\$220 consoli- dated AMT	×	\$192, P's separate adjusted AMT		
		\$240, the sum of all members' sep- arate adjusted AMTs		= \$176
S1				
\$220 consoli- dated AMT	×	\$48, S1's separate adjusted AMT		
		\$240, the sum of all members' sep- arate adjusted AMTs		= \$44

EXAMPLE 2.—(i) 1994 REGULAR TAX AND AMT COMPUTATION

	P	S1	S2	Consoli- dated
Taxable income	\$5,000		\$2,000	\$7,000
Adjustments and preferences	(5,000)	\$8,000	3,400	6,400
AMTI		8,000	5,400	13,400
TMT (20%)				2,680
RT liability (34%)				2,380
AMT				300

(ii) Computation of separate adjusted AMT.**(A) Computation of Consolidated AMT Excluding P's Items**

Taxable income	\$2,000
Adjustments and preferences	11,400
AMTI	13,400
TMT (20%)	2,680
RT liability (34%)	680
AMT	2,000

Consolidated AMT computed without P's items is \$2,000. Because the consolidated AMT with P is only \$300, P has no separate adjusted AMT.

(B) Computation of Consolidated AMT Excluding S1's Items

Taxable income	\$7,000
Adjustments and preferences	(1,600)
AMTI	5,400
TMT (20%)	1,080
RT liability (34%)	2,380
AMT	

The group has no consolidated AMT if S1's items are excluded. Accordingly, under paragraph (h)(6)(iv)(B) of this section, S1's separate adjusted AMT is \$1,600, the sum of \$300 (consolidated AMT computed with S1's items minus consolidated AMT computed without S1's items), and \$1,300 (the excess of the consolidated regular tax computed without S1's items (\$2,380) over the consolidated TMT computed without S1's items (\$1,080)).

(C) Computation of Consolidated AMT Excluding S2's Items

Taxable income	\$5,000
Adjustments and preferences	3,000
AMTI	8,000
TMT (20%)	1,600

RT liability (34%) 1,700
AMT

The group has no consolidated AMT if S2's items are excluded. Accordingly, under paragraph (h)(6)(iv)(B) of this section, S2's separate adjusted AMT is \$400, the sum of \$300 (consolidated AMT computed with S2's items minus consolidated AMT computed without S2's items), and \$100 (the excess of the consolidated regular tax computed without S2's items (\$1,700) over the consolidated TMT computed without S2's items (\$1,600)).

(iii) Allocation of 1994 consolidated MTC to members of the group. Under paragraph (h)(6)(iii)(A) of this section, the amount of the 1994 consolidated adjusted net minimum tax allocable to S1 and S2 is determined as follows (P is allocated no portion of the consolidated MTC because P has no separate adjusted AMT):

\$300 consoli- dated AMT	×	\$1,600, S1's sepa- rate adjusted AMT		
		\$2,000, the sum of all members' separate adjusted AMTs		= \$225
S2				
\$300 consoli- dated AMT	×	\$400, S2's sepa- rate adjusted AMT		
		\$2,000, the sum of all members' sepa- rate adjusted AMTs		= \$75

(vi) Member's allocable share of allowable consolidated MTC in a consolidated return year—(A) In general. For purposes of determining the amount of the consolidated MTC allocable to a member under this paragraph (h)(6), a member's allocable share of the consolidated adjusted net minimum tax for a consolidated return year must, as described in paragraph (h)(6)(ii) of this section, be reduced by the member's allocable share of that amount allowable in a subsequent consolidated return year as a consolidated MTC. The member's allocable share of consolidated adjusted net minimum tax for a year that is allowable as a consolidated MTC in a subsequent taxable year is determined by multiplying the consolidated adjusted net minimum tax for the year allowable as a consolidated MTC (taking into account the ordering rules of paragraph (h)(7) of this section) by a fraction, the numerator of which is the member's allocable share of that consolidated adjusted net minimum tax and the denominator of which is the total amount of that consolidated adjusted net minimum tax.

(B) Example. The provisions of this paragraph (h)(6)(vi) are illustrated by the following example.

Example. (i) P, S1, and S2 file a consolidated return. In 1994, the group has consolidated adjusted net minimum tax of \$100. Pursuant to the allocation method provided in paragraph (h)(6)(iii) of this section, P's, S1's, and S2's allocable shares of

the 1994 consolidated adjusted net minimum tax are \$60, \$30, and \$10, respectively. The group has no separate return year MTC as defined in paragraph (h)(4) of this section.

(ii) In 1995, the group has an \$80 excess of modified consolidated regular tax over consolidated tentative minimum tax. Accordingly, \$80 of the 1994 consolidated adjusted net minimum tax is allowable as a consolidated MTC in 1995 to offset consolidated regular tax.

(iii) As described in paragraph (h)(6)(ii) of this section, each member's allocable share of the 1994 consolidated adjusted net minimum tax is reduced by its allocable share of that \$80 amount allowable as a consolidated MTC in 1995. The reduction amount is, under paragraph (h)(6)(vi) of this section, determined by multiplying the consolidated adjusted net minimum tax allowable as a consolidated MTC by a fraction, the numerator of which is the member's allocable share of that consolidated adjusted net minimum tax and the denominator of which is the total amount of that consolidated adjusted net minimum tax. As provided above, P's allocable share of the consolidated adjusted net minimum tax is 60 percent (60/100), S1's allocable share is 30 percent (30/100), and S2's allocable share is 10 percent (10/100). Accordingly, P's allocable share of the consolidated adjusted net minimum tax is reduced by \$48 (\$80 multiplied by .60). S1's allocable share of the consolidated adjusted net minimum tax is reduced by \$24 (\$80 multiplied by .30). S2's allocable share of the consolidated adjusted net minimum tax is reduced by \$8 (\$80 multiplied by .10).

(7) *Amount of adjusted net minimum tax allowable as a consolidated MTC.* Under the rules provided in paragraphs (h)(3)(i)(B)(1), (h)(4)(i)(B)(2), (h)(6)(ii), and (h)(6)(vi) of this section, adjusted net minimum tax, whether consolidated adjusted net minimum tax or adjusted net minimum tax from separate return years, must be reduced by the amount of that adjusted net minimum tax allowable in a subsequent consolidated return year as a consolidated MTC. For purposes of those rules, consolidated adjusted net minimum tax and adjusted net minimum tax from separate return years are allowable as a consolidated MTC in the order of the taxable year in which the adjusted net minimum tax is imposed, with the adjusted net minimum tax imposed in the taxable year with the earliest year end allowable first. Consolidated adjusted net minimum tax and adjusted net minimum tax from separate return years imposed in taxable years ending on the same date are considered to be allowable as a consolidated MTC in proportion to the total consolidated adjusted net minimum tax and adjusted net minimum tax from separate return years incurred in that same taxable year. If, however, there is a limitation on the use of a consolidated MTC (e.g., under section 383), the adjusted net minimum

tax unable to be used as a credit because of the limitation is disregarded for purposes of the computation provided in this paragraph (h)(7).

(i) [Reserved].

(j) *Successor and predecessor.* For purposes of this section any reference to a corporation or member includes, as the context may require, a reference to a successor or predecessor.

(k) *Effective date.* This section applies to any consolidated return year for which the due date of the income tax return (without regard to extensions) is on or after [the date that is sixty days after final regulations are filed with the Federal Register].

Par. 8. Section 1.1552-1 is amended by adding paragraphs (g) through (j) to read as follows:

§ 1.1552-1 Earnings and profits.

(g) *Allocation of consolidated AMT and allowable consolidated MTC to members—(1) In general.* For purposes of determining the earnings and profits of each member of a consolidated group, the consolidated AMT and allowable consolidated MTC (computed under § 1.1502-55) must be allocated among the members in accordance with this paragraph (g).

(2) *Amount of consolidated AMT allocated to a member.* The amount of consolidated AMT allocated to a member is determined by multiplying the consolidated AMT by a fraction, the numerator of which is the separate adjusted AMT (as defined in § 1.1502-55(h)(6)(iv)) of the member for the year, and the denominator of which is the sum of each member's separate adjusted AMT for the year.

(3) *Amount of allowable consolidated MTC allocated to a member.* The amount of allowable consolidated MTC in a taxable year must be allocated among the consolidated group members in accordance with the principles of § 1.1502-55(h)(6)(vi) and (7).

(4) *Effective date.* Paragraph (g) of this section applies to any consolidated return year for which the due date of the income tax return (without regard to extensions) is on or after [the date that is sixty days after final regulations are filed with the Federal Register].

(h) *Allocation of consolidated environmental tax—(1) In general.* For purposes of determining the earnings and profits of each member of a consolidated group, the consolidated environmental tax (as defined in paragraph (h)(2) of this section) must be allocated among the members in accordance with paragraph (h)(3) of this section.

(2) *Consolidated environmental tax—(i) In general.* The consolidated environmental tax is equal to 0.12 percent of the excess of—

(A) Consolidated modified AMTI; over

(B) \$2,000,000.

(ii) *Consolidated modified AMTI.* For purposes of determining the consolidated environmental tax, consolidated modified AMTI is equal to the consolidated AMTI (as defined in § 1.1502-55(b)), but determined without taking into account—

(A) The consolidated ATNOL deduction (as defined in § 1.1502-55(b)(4)); and

(B) The deduction for the payment of an environmental tax under section 164(a)(5).

(3) *Amount of consolidated environmental tax to be allocated to a member—(i) In general.* The amount of consolidated environmental tax to be allocated to a member is determined by multiplying the consolidated environmental tax by a fraction, the numerator of which is the separate modified AMTI of the member, and denominator of which is the sum of each member's separate modified AMTI.

(ii) *Separate modified AMTI.* For purposes of the allocation of consolidated environmental tax, separate modified AMTI of a member is the consolidated modified AMTI determined by taking into account only the member's items of income, gain, deduction, and loss, including the member's losses and deductions actually absorbed by the group in the taxable year (whether or not absorbed by the member). For purposes of this allocation, a member is considered to have separate modified AMTI only if the computation in this paragraph (h)(3)(ii) produces a number that is greater than zero.

(4) *Effective date.* Paragraph (h) of this section applies to any consolidated return year for which the due date of the income tax return (without regard to extensions) is on or after [Insert date that is sixty days after the final regulations are filed with the Federal Register].

(i) [Reserved]

(j) *Allocation of consolidated additional taxes to members.* For purposes of determining the earnings and profits of each member of a consolidated group, the consolidated additional taxes (as defined in § 1.1502-2(b)) are allocated to the members in accordance with any reasonable method used by the group. This paragraph (j) applies to any consolidated return year for which the due date of the income tax return (without regard to extensions) is

on or after [Insert date that is sixty days after final regulations are filed with the Federal Register.]

Shirley D. Peterson,

Commissioner of Internal Revenue.

[FR Doc. 92-31086 Filed 12-29-92; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[IA-57-89]

RIN 1545-AN73

Consolidated Returns—Alternative Minimum Tax; Hearing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document contains notice of a public hearing on proposed regulations under sections 53 to 59, 1502, and 1552 of the Internal Revenue Code relating generally to the computation of the alternative minimum tax by consolidated groups.

DATES: The public hearing will be held on Tuesday, April 6, 1993, beginning at 10 a.m. Requests to speak and outlines of oral comments must be received by Tuesday, March 16, 1993.

ADDRESSES: The public hearing will be held in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R, (IA-57-89) room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622-8452 or (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 53 to 59, 1502, and 1552 of the Internal Revenue Code. The proposed regulations appear elsewhere in this issue of the *Federal Register*.

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than Tuesday,

March 16, 1993, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be permitted beyond the lobby of the Internal Revenue Service Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-31087 Filed 12-29-92; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1

[PS-56-90]

RIN 1545-A078

Application of Section 514(c)(9)(E) of the Internal Revenue Code to Partnerships in Which One or More (but not all) of the Partners Are Qualified Organizations Within the Meaning of Section 514(c)(9)(C)

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the application of section 514(c)(9)(E) of the Internal Revenue Code to partnerships in which one or more (but not all) of the partners are qualified tax-exempt organizations within the meaning of section 514(c)(9)(C). These organizations include educational organizations described in section 170(b)(1)(A)(ii) and their affiliated support organizations, and qualified trusts described in section 401.

DATES: Written comments and requests to appear (with outlines of oral comments to be presented) at a public hearing scheduled for 10 a.m. on March 31, 1993, must be received by March 10, 1993. See the Notice of Hearing published elsewhere in this issue of the *Federal Register*.

ADDRESSES: Send comments and requests to speak (with outlines of oral

comments to be presented) at the public hearing to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044 (Attention CC:CORP:T:R (PS-56-90), room 5228).

FOR FURTHER INFORMATION CONTACT:

Concerning the hearing, Carol Savage at (202) 622-8452 (not a toll-free number); concerning the regulations, Christopher G. Kehoe at (202) 622-3080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document proposes amendments to title 26 of the Code of Federal Regulations to provide rules governing the application of section 514(c)(9)(E) of the Internal Revenue Code (Code). Section 514(c)(9)(E) was added to the Code by section 10214 of the Omnibus Budget Reconciliation Act of 1987, Public Law No. 100-203, and was amended by section 2004(h) of the Technical and Miscellaneous Revenue Act of 1988, Public Law No. 100-647. A partnership satisfies the requirements of section 514(c)(9)(E) if: (I) The allocation of items to any partner that is a qualified organization (as defined in section 514(c)(9)(C)) cannot result in that partner having a share of overall partnership income for any taxable year greater than that partner's share of overall partnership loss for the taxable year for which that partner's loss share will be the smallest, and (II) each allocation with respect to the partnership has substantial economic effect within the meaning of section 704(b)(2).

Section 514(c)(9)(E)(ii) of the Code contains special rules relating to income and loss chargebacks, and preferred returns and guaranteed payments. Section 514(c)(9)(E)(iii) directs the Secretary to prescribe regulations necessary to carry out the purposes of section 514(c)(9)(E), and authorizes the Secretary to prescribe regulations that provide for the exclusion or segregation of items of income and loss.

On June 25, 1990, Notice 90-41, 1990-1 C.B. 350, was published in the Internal Revenue Bulletin to provide interim guidance regarding the application of section 514(c)(9)(E) of the Code and to request comments.

Explanation of Provisions

I. General Background

Under section 511 of the Code, tax-exempt organizations are generally taxable on their unrelated business taxable income. Section 514(a) provides that unrelated business taxable income includes a specified percentage of the gross income derived from debt-

financed property described in section 514(b). Subject to certain requirements, section 514(c)(9) provides an exception for income derived from certain debt-financed investments in real property by qualified organizations. Under section 514(c)(9)(C), qualified organizations include educational organizations described in section 170(b)(1)(A)(ii) and their affiliated support organizations, and qualified trusts described in section 401.

The exception provided in section 514(c)(9) contains additional requirements for debt-financed real property held by a partnership in which one or more (but not all) of the partners are qualified organizations. Either each allocation to a partner that is a qualified organization must be a qualified allocation within the meaning of section 168(h)(6), or the partnership must satisfy the requirements of section 514(c)(9)(E). These proposed regulations provide rules governing the application of section 514(c)(9)(E).

II. Introduction

For a partnership to satisfy the requirements of section 514(c)(9)(E), the allocation of items to any partner that is a qualified organization cannot result in that partner having a percentage share of overall partnership income for any taxable year greater than that partner's percentage share of overall partnership loss for the taxable year for which that partner's percentage loss share will be the smallest (that partner's "fractions rule percentage"). This requirement, commonly referred to as the fractions rule, must be satisfied both on a prospective basis and on an actual basis for each taxable year of the partnership. The second requirement under section 514(c)(9)(E) is that each partnership allocation must either have substantial economic effect or (in the case of certain allocations that cannot have economic effect) be deemed to be in accordance with the partners' interests in the partnership.

Overall partnership income is the amount by which the aggregate items of partnership income and gain for the taxable year exceed the aggregate items of partnership loss and deduction for the year. Overall partnership loss is the amount by which the aggregate items of partnership loss and deduction for the taxable year exceed the aggregate items of partnership income and gain for the year. In general, all items of partnership income, gain, loss, and deduction that increase or decrease the partners' capital accounts under § 1.704-1(b)(2)(iv) are taken into account in computing overall partnership income or loss.

The proposed regulations exclude allocations of certain items—generally by disregarding those items in computing overall partnership income or loss and the partners' allocable shares of overall partnership income or loss. The purpose of the exclusions is to allow ordinary economic business allocations (such as preferred returns), to avoid technical violations arising due to the requirements of section 704(b), and to avoid "foot-faults."

III. Application of Rules

A. Preferred Returns and Guaranteed Payments

In general, items of income (including gross income) and gain that may be allocated to a qualified organization with respect to a current or cumulative reasonable preferred return for capital (including allocations of minimum gain attributable to nonrecourse or partner nonrecourse liability proceeds distributed to the qualified organization as a reasonable preferred return) are disregarded in computing overall partnership income or loss for purposes of the fractions rule. Reasonable guaranteed payments for capital or services also are disregarded for purposes of the fractions rule. Notice 90-41 provides that reasonable preferred returns and reasonable guaranteed payments for capital may be computed, with respect to unreturned capital, at a rate that is no greater than 120 percent of the highest applicable federal rate (AFR). In response to comments received on the notice, the proposed regulations provide that a preferred return or guaranteed payment for capital is reasonable to the extent it is computed, with respect to unreturned capital, at a commercially reasonable rate. The proposed regulations provide two safe-harbor rates that are tied to the highest long-term applicable federal rate (AFR) within the meaning of section 1274(d), for the month the qualified organization's right to a preferred return or guaranteed payment is first established or for any month in the partnership taxable year for which the return or payment on capital is computed. Under the safe harbors, a rate is deemed to be commercially reasonable if it is less than or equal to 150 percent of the relevant AFR or less than or equal to the relevant AFR plus four percentage points. A rate in excess of the safe-harbor rates may be commercially reasonable, depending on the relevant facts and circumstances. The proposed regulations provide that a reasonable preferred return is disregarded in computing overall partnership income or loss only to the

extent corresponding items of income or gain will not be allocated for a taxable year unless the preferred return is paid in cash before the due date (not including extensions) for filing the partnership's return for that taxable year. A similar "cash-before-accrual" requirement applies to guaranteed payments. A partnership that avails itself of the rule disregarding reasonable guaranteed payments is required to deduct a reasonable guaranteed payment to a qualified organization no earlier than the taxable year it is paid in cash. However, a guaranteed payment that is paid in cash within 75 days after the end of a taxable year may be treated as paid in that prior taxable year. In response to comments received on the notice, the proposed regulations make it clear that, if a partnership does not have sufficient cash flow to make distributions or payments to a qualified organization on a current basis, the partnership is permitted to distribute or pay the shortfall (on a compound basis if the partnership chooses) and make corresponding allocations in later years without violating the fractions rule.

B. Chargebacks and Income Offsets

The proposed regulations provide exceptions for certain types of chargebacks. The first exception is for allocations that chargeback prior disproportionately large allocations (i.e., in excess of a qualified organization's fractions rule percentage) of overall partnership loss to a qualified organization, or prior disproportionately small allocations of overall partnership income to a qualified organization. To qualify, the chargeback must reverse an allocation of the entire overall partnership income or loss for a taxable year, or an allocation of a part of the overall partnership income or loss that consists of a pro rata portion of each item of partnership income, gain, loss, and deduction comprising the overall partnership income or loss for the year. In addition, although the prior allocations may be charged back in any order, each allocation that is charged back must be charged back in the same ratio as originally made.

Additional exceptions are provided for minimum gain chargebacks of nonrecourse deductions and qualified income offsets since partnerships generally must include those types of provisions in the partnership agreement to comply with the section 704(b) regulations. Although the minimum gain chargeback exception nominally applies to all allocations of nonrecourse deductions, it should be noted that since no exception is provided for the initial allocation of nonrecourse

deductions, the fractions rule will generally be satisfied only if nonrecourse deductions are allocated in accordance with each partner's fractions rule percentage or if disproportionately large allocations of these deductions are made to the qualified organizations. The proposed regulations contain a formula for determining the extent to which a minimum gain chargeback is attributable to nonrecourse deductions (or partner nonrecourse deductions).

There is also an exception for chargebacks of partner nonrecourse deductions. This exception is broader than the one for chargebacks of partnership nonrecourse deductions because the section 704(b) regulations require the disproportionate allocation of partner nonrecourse deductions in certain circumstances that arise either for valid business reasons or unexpectedly. The exception is broader in that chargebacks of compensating allocations of recourse deductions to another partner are also disregarded. In addition, a related provision in the proposed regulations disregards potential allocations of partner nonrecourse deductions and compensating allocations to other partners until they are actually made. Thus, for example, if a taxable partner is allocated \$100 of partner nonrecourse deductions and a compensating allocation of \$100 of recourse deductions is made to the qualified organization in the same taxable year, generally, neither the initial allocations nor the subsequent chargeback of the initial allocations will cause the partnership to violate the fractions rule. These provisions address a concern several commentators expressed, namely, that including a provision in a partnership agreement (as may be required by § 1.704-2) that allocates partner nonrecourse deductions to a taxable partner may violate the fractions rule even in situations where the partners are confident that actual allocations of partner nonrecourse deductions will not violate the fractions rule.

The proposed regulations disregard minimum gain chargebacks attributable to the distribution of nonrecourse (or partner nonrecourse) liability proceeds only to the extent that the chargeback is attributable to a distribution of a reasonable preferred return to a qualified organization. However, to avoid technical violations of the fractions rule that would otherwise arise from including a minimum gain chargeback provision in a partnership agreement, allocations of minimum gain that may be made with respect to distributions that are used for purposes

other than funding reasonable preferred returns to qualified organizations are taken into account only to the extent an allocation is actually made.

C. Exclusion of Items of Loss and Deduction

In response to comments received on the notice, the proposed regulations allow partnerships to specially allocate certain expenditures, which are attributable to some but not all of the partners, to the partners that bear the economic effect of those allocations without violating the fractions rule. This exception applies to expenditures for the additional record-keeping and accounting that may be incurred in computing basis adjustments under section 743(b), additional administrative costs that result from having a foreign partner, and state and local taxes or expenditures relating to those taxes.

In addition, the proposed regulations provide that allocations of unlikely losses or deductions (other than items of nonrecourse deduction) that may be specially allocated to partners that bear the economic effect of those allocations are disregarded in computing overall partnership income or loss for purposes of the fractions rule. Losses and deductions are unlikely only if they result from unexpected events. Events are unexpected if they could not reasonably have been foreseen by the partners, taking into account all relevant facts, circumstances, and information available to the partners (including bona fide financial projections). These events include those in the nature of liabilities from tort and other unforeseen third-party litigation; labor strikes; unusual delays in securing required permits or licenses; abnormal weather conditions (considering the season and the job site); significant delays in leasing property due to an economic downturn in the geographic area; and unanticipated cost overruns. No inference is drawn as to whether a loss or deduction is unlikely from the fact that the partnership agreement includes a provision for allocating that loss or deduction. To address concerns raised by commentators, the rule for excluding unlikely losses and deductions operates without regard to the capital account balances of the qualified organization partners or whether the partnership realizes a profit or loss in the years that allocations may be made.

D. Other Exceptions

Many partnership agreements include one or more provisions that allocate items of loss or deduction away from a partner whose capital account deficit would otherwise be larger than is

permitted under the section 704(b) regulations. The proposed regulations disregard such provisions for purposes of the fractions rule in taxable years in which there are no such allocations. However, for the provision to qualify for this exception, all relevant facts, circumstances, and information available to the partners at the time the provision becomes part of the agreement must reasonably indicate that it is unlikely that an allocation pursuant to the provision will be made during the life of the partnership.

Similarly, as noted above, the proposed regulations disregard potential allocations of partner nonrecourse deductions and compensating allocations of other deductions for purposes of the fractions rule in taxable years in which there are no such allocations. The proposed regulations also waive violations of the fractions rule that may arise if disproportionately large allocations of partner nonrecourse deductions to a qualified organization causes another qualified organization's share of overall loss to be disproportionately small for the year. This rule may not be applied in a manner that would allow partnerships to shift income to qualified organizations.

E. De Minimis Exceptions

The proposed regulations also provide two *de minimis* exceptions. The first exception excludes partnerships from the fractions rule altogether if: (1) Qualified organizations do not hold, in the aggregate, interests of greater than five percent in the capital or profits of the partnership; and (2) the qualified-organization partners participate on substantially the same terms as all other partners, or as all other similarly situated taxable partners owning substantial interests in the partnership. The second exception is for allocations of *de minimis* amounts of loss or deduction items that are made away from qualified organizations and to taxable partners. These *de minimis* allocations are disregarded only if they are unplanned and not motivated by tax avoidance.

F. Tiered Partnerships

The proposed regulations allow a qualified organization that uses a tiered-partnership structure to demonstrate that the fractions rule is satisfied under any reasonable method so long as tax avoidance is not a principal purpose for the tiered structure. Three examples illustrate the application of the rule.

G. Proposed Effective Dates

The regulations are generally proposed to apply on December 30, 1992.

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these proposed regulations. Therefore, an initial Regulatory Impact Analysis is not required.

Submission to Small Business Administration

Pursuant to section 7805(f) of the Internal Revenue Code, a copy of the rules will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are timely submitted (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. Written comments and requests to appear at a public hearing scheduled for 10 a.m. on March 31, 1993, must be received by March 10, 1993. See the notice of public hearing published elsewhere in this issue of the Federal Register.

Drafting Information

The principal author of these proposed regulations is Christopher G. Kehoe, Office of the Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the proposed regulations on matters of both substance and style.

List of Subjects in 26 CFR 1.511-1 Through 12.514(g)-1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. The authority citation for part 1 is amended by adding the following citation:

Authority: 26 U.S.C. 7805 * * * Section 1.514(c)-2 also issued under 26 U.S.C. 514(c)(9)(E)(iii). * * *

Par. 2. Section 1.514(c)-2 is added to read as follows:

§ 1.514(c)-2 Permitted allocations under section 514(c)(9)(E).

(a) *Table of contents.* This paragraph contains a listing of the major headings of this § 1.514(c)-2.

- (a) Table of contents.
- (b) Application of section 514(c)(9)(E), relating to debt-financed real property held by partnerships.
 - (1) In general.
 - (i) The fractions rule.
 - (ii) Substantial economic effect.
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- (c) General Definitions.
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- (d) Exclusion of reasonable preferred returns and guaranteed payments.
 - (1) Overview.
 - (2) Preferred Returns.
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 - (5) Unreturned capital.
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 - (ii) Return of capital.
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 - (i) Limitation on allocations of income with respect to reasonable preferred returns for capital.
 - (ii) Guaranteed payments must be paid in cash.
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- (e) Chargebacks and offsets.
 - (1) In general.
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 - (i) In general.
 - (ii) Limitation on chargebacks of partial allocations.
 - (3) Minimum gain chargebacks attributable to nonrecourse deductions.
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 - (5) Examples.
- (f) Exclusion of reasonable partner-specific items of deduction.
- (g) Exclusion of unlikely losses and deductions.
- (h) Provisions preventing deficit capital account balances.

- (i) [Reserved].
- (j) Exception for partner nonrecourse deductions.
 - (1) Partner nonrecourse deductions disregarded until actually allocated.
 - (2) Disproportionate allocation of partner nonrecourse deductions to a qualified organization.
- (k) Special rules.
 - (1) Changes in partnership allocations arising from a change in the partners' interests.
 - (2) De minimis interest rule.
 - (3) De minimis allocations disregarded.
 - (i) General rule.
 - (ii) De minimis amount defined.
 - (4) Anti-abuse rule.
- (l) [Reserved].
- (m) Tiered partnerships.
 - (1) In general.
 - (2) Examples.
- (n) Effective date.
 - (1) In general.
 - (2) General effective date of the regulations.
 - (3) Periods after June 24, 1990, and prior to December 30, 1992.
 - (4) Periods prior to the issuance of Notice 90-41.
 - (5) Material modifications to partnership agreements.
- (b) *Application of section 514(c)(9)(E), relating to debt-financed real property held by partnerships—(1) In general.* This § 1.514(c)-2 provides rules governing the application of section 514(c)(9)(E). To comply with section 514(c)(9)(E), the following two requirements must be met:
 - (i) *The fractions rule.* The allocation of items to a partner that is a qualified organization cannot result in that partner having a percentage share of overall partnership income for any taxable year greater than that partner's fractions rule percentage (as defined in paragraph (c)(2) of this section); and
 - (ii) *Substantial economic effect.* Each partnership allocation must have substantial economic effect or, in the case of allocations that cannot have economic effect, must be deemed to be in accordance with the partners' interests in the partnership within the meaning of § 1.704-1 or 1.704-2.
- (2) *Manner in which fractions rule is applied.—(i) In general.* Except as otherwise provided in this section, a partnership must satisfy the fractions rule both on a prospective basis and on an actual basis for each taxable year of the partnership, commencing with the first taxable year of the partnership in which the partnership holds debt-financed real property and has a qualified organization as a partner. The partnership agreement includes side agreements (see § 1.704-1(b)(2)(ii)(h)) and informal understandings that might affect the application of the fractions rule. See paragraph (k) of this section for special rules relating to changes in the

partners' interests and *de minimis* exceptions to the fractions rule.

(ii) *Subsequent changes.* A subsequent change to a partnership agreement that causes the partnership to violate the fractions rule ordinarily causes the partnership's income to fail the unrelated business income tax exception of section 514(c)(9)(A) only for the taxable year of the change and subsequent taxable years.

(c) *General Definitions.*—(1) *Overall partnership income and loss.* Overall partnership income is the amount by which the aggregate items of partnership income and gain for the taxable year exceed the aggregate items of partnership loss and deduction for the year. Overall partnership loss is the amount by which the aggregate items of partnership loss and deduction for the taxable year exceed the aggregate items of partnership income and gain for the year.

(i) *Items taken into account in determining overall partnership income and loss.* Except as otherwise provided, the partnership items that are included in computing overall partnership income or loss are those items of income, gain, loss, and deduction (including expenditures described in section 705(a)(2)(B)) that increase or decrease the partners' capital accounts under § 1.704-1(b)(2)(iv). Tax items allocable pursuant to section 704(c) or § 1.704-1(b)(2)(iv)(f)(4) are not included in computing overall partnership income or loss.

(ii) *Guaranteed payments to qualified organizations.* Except to the extent otherwise provided in paragraph (d) of this section—

(A) A guaranteed payment to a qualified organization is not treated as an item of partnership loss or deduction in computing overall partnership income or loss; and

(B) Income that a qualified organization may receive or accrue with respect to a guaranteed payment is treated as an allocable share of overall partnership income or loss for purposes of the fractions rule.

(2) *Fractions rule percentage.* A qualified organization's fractions rule percentage is that partner's percentage share of overall partnership loss for the taxable year for which that partner's percentage share of overall partnership loss will be the smallest.

(3) *Definitions of certain terms by cross reference to partnership regulations.* Nonrecourse deduction, nonrecourse liability, minimum gain chargeback, nonrecourse liability proceeds, partner nonrecourse debt, and partner nonrecourse deductions have

the meanings provided in §§ 1.704-1 and 1.704-2.

(4) *Example.* The following example illustrates this paragraph (c).

Example. Computation of overall partnership income and loss for a taxable year. (i) TP, a taxable corporation, and QO, a qualified organization, form a partnership to own and operate encumbered real property. Under the partnership agreement, all items of income, gain, loss, deduction, and credit are allocated 50 percent to TP and 50 percent to QO. Neither partner is entitled to a preferred return. In its first taxable year, the partnership has bottom-line net income of \$5,100, which is comprised of \$10,000 of rental income, \$4,000 of salary expense, and a \$900 guaranteed payment for services to QO, no part of which qualifies as a reasonable guaranteed payment under paragraph (d) of this section.

(ii) The partnership violates the fractions rule. The guaranteed payment is not treated as an item of deduction in computing overall partnership income or loss because it does not qualify as a reasonable guaranteed payment. See paragraph (c)(1)(ii)(A) of this section. Accordingly, overall partnership income for the year is \$6,000, which consists of \$10,000 of rental income less \$4,000 of salary expense. See paragraph (c)(1)(i) of this section. The \$900 of income that QO may receive or accrue with respect to the guaranteed payment is treated as an allocable share of the \$6,000 of overall partnership income. See paragraph (c)(1)(ii)(B) of this section. Therefore, QO's allocable share of the overall partnership income for the year is \$3,450, which is comprised of the \$900 of income pertaining to QO's guaranteed payment, plus QO's \$2,550 allocable share of the partnership's net income for the year (50 percent of \$5,100). QO's \$3,450 allocable share of overall partnership income equals 58.2 percent of the \$6,000 of overall partnership income and exceeds QO's fractions rule percentage, which is less than 50 percent. (If there were no guaranteed payment, QO's fractions rule percentage would be 50 percent. However, the existence of the guaranteed payment to QO that is not disregarded for purposes of the fractions rule pursuant to paragraph (d) of this section means that QO's fractions rule percentage is less than 50 percent.)

(d) *Exclusion of reasonable preferred returns and guaranteed payments.*—(1) *Overview.* This paragraph (d) sets forth requirements for disregarding reasonable preferred returns for capital and reasonable guaranteed payments for capital or services for purposes of the fractions rule. To qualify, the preferred return or guaranteed payment must be set forth in a binding, written partnership agreement.

(2) *Preferred Returns.* Items of income (including gross income) and gain that may be allocated to a qualified organization with respect to a current or cumulative reasonable preferred return for capital (including allocations of minimum gain attributable to

nonrecourse (or partner nonrecourse liability) proceeds distributed to the qualified organization as a reasonable preferred return) are disregarded in computing overall partnership income or loss for purposes of the fractions rule.

(3) *Guaranteed Payments.* A current or cumulative reasonable guaranteed payment to a qualified organization for capital or services is treated as an item of deduction in computing overall partnership income or loss, and the income that qualified organization may receive or accrue from the current or cumulative reasonable guaranteed payment is not treated as an allocable share of overall partnership income or loss. The treatment of a guaranteed payment as reasonable for purposes of section 514(c)(9)(E) does not affect its possible characterization as unrelated business taxable income under other provisions of the Internal Revenue Code.

(4) *Reasonable amount.*—(i) *In general.* A guaranteed payment for services is reasonable only to the extent the amount of the payment is reasonable under § 1.162-7 (relating to the deduction for payment of personal services). A preferred return or guaranteed payment for capital is reasonable only to the extent it is computed, with respect to unreturned capital, at a rate that is commercially reasonable based on the relevant facts and circumstances.

(ii) *Safe harbor.* For purposes of this paragraph (d)(4), a rate is deemed to be commercially reasonable if it is no greater than four percentage points more than, or if it is no greater than 150 percent of, the highest long-term applicable federal rate ("AFR") within the meaning of section 1274(d), for the month the qualified organization's right to a preferred return or guaranteed payment is first established or for any month in the partnership taxable year for which the return or payment on capital is computed. A rate in excess of the rates described in the preceding sentence may be commercially reasonable, based on the relevant facts and circumstances.

(5) *Unreturned capital.*—(i) *In general.* Unreturned capital is computed on a weighted-average basis and equals the excess of—

(A) The amount of money and the fair market value of property contributed by the partner to the partnership (net of liabilities assumed, or taken subject to, by the partnership); over

(B) The amount of money and the fair market value of property (net of liabilities assumed, or taken subject to, by the partner) distributed by the

partnership to the partner as a return of capital.

(ii) *Return of capital.* In determining whether a distribution constitutes a return of capital, all relevant facts and circumstances, including the terms of the partnership agreement, are taken into account. Generally, a material distribution is treated as a return of capital if it is not attributable to the partnership's cash flow from its business operations.

(6) *Timing rules.*—(i) *Limitation on allocations of income with respect to reasonable preferred returns for capital.* Items of income and gain that may be allocated to a qualified organization in a taxable year with respect to a reasonable preferred return for capital are disregarded for purposes of the fractions rule only to the extent the allocable amount will not exceed—

(A) The aggregate of the amount that has been distributed to the qualified organization as a reasonable preferred return for the taxable year of the allocation and prior taxable years, on or before the due date (not including extensions) for filing the partnership's return for the taxable year of the allocation, minus

(B) The aggregate amount of corresponding income and gain allocated to the qualified organization in all prior years.

(ii) *Guaranteed payments must be paid in cash.* A partnership that avails itself of paragraph (d)(3) of this section is required to deduct a reasonable guaranteed payment to a qualified organization no earlier than the taxable year it is paid in cash. For purposes of this paragraph (d)(6)(ii), a guaranteed payment that is paid in cash within 75 days after the end of a taxable year may be treated as paid in that prior taxable year.

(7) *Examples.* The following examples illustrate this paragraph (d).

Facts. Qualified organization QO and taxable corporation TP form a partnership. QO contributes \$9,000 to the partnership and TP contributes \$1,000. The partnership borrows \$50,000 from a third party lender and purchases an office building for \$55,000. At all relevant times the safe harbor rate described in paragraph (d)(4)(ii) of this section equals 10 percent. All allocations in the partnership agreement satisfy the requirements of section 514(c)(9)(E)(i)(II).

Example 1. Allocations made with respect to preferred returns. (i) The partnership agreement provides that in each taxable year the partnership's "distributable cash" is first to be distributed to QO as a 10 percent preferred return on its unreturned capital. To the extent the partnership has insufficient cash to pay QO its preferred return in any taxable year, the preferred return is compounded (at 10 percent) and is to be paid

in future years to the extent the partnership has distributable cash. The partnership agreement first allocates gross income and gain 100 percent to QO, to the extent cash has been distributed to QO as a preferred return. All remaining profit or loss is allocated 50 percent to QO and 50 percent to TP.

(ii) The partnership satisfies the fractions rule. Items of income and gain that may be allocated to QO with respect to its preferred return are disregarded in computing overall partnership income or loss for purposes of the fractions rule because the requirements of paragraph (d) of this section are satisfied. After disregarding those allocations, QO's fractions rule percentage is 50 percent (see paragraph (c)(2) of this section), and under the partnership agreement QO may not be allocated more than 50 percent of overall partnership income in any taxable year.

(iii) The facts are the same as in paragraph (i) of Example 1, except that QO's preferred return is computed on unreturned capital at a rate that is not commercially reasonable. The partnership violates the fractions rule. The income and gain that may be specially allocated to QO with respect to the preferred return is not disregarded in computing overall partnership income or loss to the extent it exceeds a commercially reasonable rate. See paragraph (d) of this section. As a result, allocations of income and gain to QO with respect to its preferred return could result in QO being allocated more than 50 percent of the overall partnership income in a taxable year.

Example 2. Guaranteed payments and the computation of overall partnership income or loss. (i) The partnership agreement allocates all bottom-line partnership income and loss 50 percent to QO and 50 percent to TP throughout the life of the partnership. The partnership agreement provides that QO is entitled each year to a 10 percent guaranteed payment on unreturned capital. To the extent the partnership is unable to make a guaranteed payment in any taxable year, the unpaid amount will be compounded at 10 percent and paid in future years.

(ii) Assuming the requirements of paragraph (d)(6)(ii) of this section are met, the partnership satisfies the fractions rule. The guaranteed payment is disregarded for purposes of the fractions rule because it is computed with respect to unreturned capital at the safe harbor rate described in paragraph (d)(4)(ii) of this section. Therefore, the guaranteed payment is treated as an item of deduction in computing overall partnership income or loss, and the corresponding income that QO may receive or accrue with respect to the guaranteed payment is not treated as an allocable share of overall partnership income or loss. See paragraph (d)(3) of this section. Accordingly, QO's fractions rule percentage is 50 percent (see paragraph (c)(2) of this section), and under the partnership agreement QO may not be allocated more than 50 percent of overall partnership income in any taxable year.

(e) *Chargebacks and offsets.*—(1) *In general.* The following allocations are disregarded in computing overall partnership income or loss for purposes of the fractions rule—

(i) Allocations of overall partnership income that may be made to chargeback (i.e., reverse) prior disproportionately large allocations of overall partnership loss (or part of the overall partnership loss) to a qualified organization, and allocations of overall partnership loss that may be made to chargeback prior disproportionately small allocations of overall partnership income (or part of the overall partnership income) to a qualified organization;

(ii) Allocations of income and gain that may be made to a partner pursuant to a minimum gain chargeback attributable to prior allocations of nonrecourse deductions to the partner;

(iii) Allocations of income and gain that may be made to a partner pursuant to a minimum gain chargeback attributable to prior allocations of partner nonrecourse deductions to the partner and allocations of income and gain that may be made to other partners to chargeback compensating allocations of other deductions to the other partners; and

(iv) Allocations of items of income or gain that may be made to a partner pursuant to a qualified income offset, within the meaning of § 1.704-1(b)(2)(ii)(d).

(2) *Disproportionate allocations.*—(i) *In general.* Prior disproportionate allocations may be reversed in any order, but must be reversed in the same ratio as originally made. A prior allocation is disproportionately large if the qualified organization's percentage share of that allocation exceeds its fractions rule percentage. A prior allocation is disproportionately small if the qualified organization's percentage share of that allocation is less than its fractions rule percentage. However, a prior allocation (or allocations) is not considered disproportionate unless the balance of the overall partnership income or loss for the taxable year of the allocation is allocated in a manner that would independently satisfy the fractions rule.

(ii) *Limitation on chargebacks of partial allocations.* Paragraph (e)(1)(i) of this section applies to an allocation of part of the overall partnership income or loss only if that part consists of a pro rata portion of each item of partnership income, gain, loss, and deduction included in computing overall partnership income or loss.

(3) *Minimum gain chargebacks attributable to nonrecourse deductions.* A minimum gain chargeback to a partner is attributable to nonrecourse deductions (or, on a debt-by-debt basis, to partner nonrecourse deductions) in the same ratio that:

(i) The aggregate amount of the nonrecourse deductions (or partner nonrecourse deductions) previously allocated but not charged back to the partner in prior taxable years, bears to

(ii) The sum of the amount described in paragraph (e)(3)(i) of this section, plus the aggregate amount of the partner's share of minimum gain that resulted from the distribution of nonrecourse (or partner nonrecourse) liability proceeds.

(4) *Chargebacks attributable to the distribution of nonrecourse liability proceeds.* Allocations of items of income and gain that may be made pursuant to a provision in the partnership agreement that charges back minimum gain attributable to the distribution of nonrecourse (or partner nonrecourse) liability proceeds are taken into account for purposes of the fractions rule only to the extent an allocation is made. (See paragraph (d)(2) of this section regarding allocations of minimum gain that are attributable to proceeds distributed as a preferred return.)

(5) *Examples.* The following examples illustrate the provisions of paragraph (e) of this section.

Example 1. Chargebacks of disproportionate allocations of overall partnership loss. (i) Qualified organization QO and taxable corporation TP form a partnership. QO contributes \$900 to the partnership and TP contributes \$100. The partnership owns encumbered real property but has no nonrecourse indebtedness. The partnership agreement allocates overall partnership loss 50 percent to QO and 50 percent to TP until TP's capital account is reduced to zero; then 100 percent to QO until QO's capital account is reduced to zero; and thereafter 50 percent to QO and 50 percent to TP. Overall partnership income is allocated first 100 percent to QO to chargeback overall partnership loss allocated 100 percent to QO, and thereafter 50 percent to QO and 50 percent to TP.

(ii) The partnership satisfies the fractions rule. QO's fractions rule percentage is 50 percent. See paragraph (c)(2) of this section. Therefore, the 100 percent allocation of overall partnership loss to QO is disproportionately large. See paragraph (e)(2)(i) of this section. Accordingly, the 100 percent allocation of overall partnership income to QO that charges back the disproportionately large allocation is disregarded in computing overall partnership income and loss for purposes of the fractions rule because it is in the same ratio as the disproportionately large allocation and because the rest of the allocations for the taxable year of the disproportionately large allocation will independently satisfy the fractions rule. See paragraph (e)(2)(i) of this section. After disregarding the chargeback allocation of 100 percent of overall partnership income, QO will not be allocated a percentage share of overall partnership

income in excess of its fractions rule percentage for any taxable year.

Example 2. (i) Qualified organization QO and taxable corporation TP form a partnership to own and operate encumbered real property. QO and TP each contribute \$500 to the partnership. In addition, QO makes a \$300 nonrecourse loan to the partnership. The partnership agreement contains a minimum gain chargeback provision and a provision that allocates partner nonrecourse deductions to the partner who bears the economic burden of the deductions in accordance with § 1.704-2. The partnership agreement also provides that to the extent partner nonrecourse deductions are allocated to QO in any taxable year, compensating allocations of other items of partnership deduction and loss will first be allocated 100 percent to TP. In addition, to the extent items of income and gain are allocated to QO in any taxable year pursuant to a minimum gain chargeback of partner nonrecourse deductions, items of partnership income and gain will first be allocated 100 percent to TP. The partnership agreement allocates all other overall partnership income or loss 50 percent to QO and 50 percent to TP.

(ii) The partnership satisfies the fractions rule on a prospective basis. The allocations of the partner nonrecourse deductions and the compensating allocation of other items of loss and deduction that may be made to TP (but which will not be made unless there is an allocation of partner nonrecourse deductions to QO) are not taken into account for purposes of the fractions rule until a taxable year in which an allocation is made. See paragraph (j)(1) of this section. In addition, minimum gain chargebacks of partner nonrecourse deductions and allocations to other partners that chargeback compensating allocations of other deductions are disregarded in computing overall partnership income or loss for purposes of the fractions rule. See paragraph (e)(1)(iii) of this section. Since all other overall partnership income and loss is allocated 50 percent to QO and 50 percent to TP, QO's fractions rule percentage is 50 percent, and QO will not be allocated a percentage share of overall partnership income in excess of its fractions rule percentage for any taxable year.

(iii) The facts are the same as in paragraph (i) of *Example 2*, except that the partnership agreement provides that compensating allocations of deductions to TP will not be charged back until year 10. The partners expect \$300 of partner nonrecourse deductions to be allocated to QO in year 1 and \$300 of income or gain to be allocated to QO in year 2 pursuant to the minimum gain chargeback provision. The partnership fails to satisfy the fractions rule on a prospective basis under the anti-abuse rule of paragraph (k)(4) of this section. If the partners' expectations prove correct, at the end of year 2, QO will have been allocated \$300 of partner nonrecourse deductions and an offsetting \$300 of minimum gain. However, the \$300 of compensating deductions and losses that may be allocated to TP will not be charged back until year 10. Thus, at the end of year 2 (and for the next eight years as well) \$300 more of deductions

and losses may be allocated to TP than QO, which would be inconsistent with the purpose of the fractions rule.

(f) *Exclusion of reasonable partner-specific items of deduction.* Provided that the expenditures are allocated to the partners to whom they are attributable, the following partner-specific expenditures are disregarded in computing overall partnership income or loss for purposes of the fractions rule—

(1) Expenditures for the additional record-keeping and accounting that may be incurred in computing basis adjustments under section 743(b);

(2) Additional administrative costs that result from having a foreign partner; and

(3) State and local taxes or expenditures relating to those taxes.

(g) *Exclusion of unlikely losses and deductions.* Unlikely losses or deductions (other than items of nonrecourse deduction) that may be specially allocated to partners that bear the economic effect of those allocations are disregarded in computing overall partnership income or loss for purposes of the fractions rule, so long as a principal purpose of the allocation is not tax avoidance. Losses and deductions are unlikely only if they result from unexpected events. Events are unexpected if they could not reasonably have been foreseen by the partners, taking into account all relevant facts, circumstances, and information available to the partners (including bona fide financial projections). These events include those in the nature of liabilities from tort and other unforeseen third-party litigation; labor strikes; unusual delays in securing required permits or licenses; abnormal weather conditions (considering the season and the job site); significant delays in leasing property due to an economic downturn in the geographic area; and unanticipated cost overruns. No inference is drawn as to whether a loss or deduction is unlikely from the fact that the partnership agreement includes a provision for allocating that loss or deduction.

(h) *Provisions preventing deficit capital account balances.* A provision in the partnership agreement that allocates items of loss or deduction away from a qualified organization in instances where allocating those loss or deduction items to the qualified organization would cause or increase a deficit balance in its capital account, for which there is no obligation to restore, is disregarded for purposes of the fractions rule in taxable years of the partnership in which no such allocations are made pursuant to the provision. However, this exception applies only if, at the time the

provision becomes part of the partnership agreement, all relevant facts, circumstances, and information (including bona fide financial projections) available to the partners reasonably indicate that it is unlikely that an allocation will be made pursuant to the provision during the life of the partnership.

(i) [Reserved]

(j) *Exception for partner nonrecourse deductions*—(1) *Partner nonrecourse deductions disregarded until actually allocated.* Items of partner nonrecourse deduction that may be allocated to a partner, pursuant to § 1.704(b)-2, and compensating allocations of other items of loss and deduction that may be allocated to other partners are not taken into account for purposes of the fractions rule until the taxable years in which they are allocated.

(2) *Disproportionate allocation of partner nonrecourse deductions to a qualified organization.* A violation of the fractions rule will be disregarded if it arises because an allocation of partner nonrecourse deductions to a qualified organization that is not motivated by tax avoidance reduces another qualified organization's fractions rule percentage below what it would have been absent the allocations of the partner nonrecourse deductions.

(k) *Special rules*—(1) *Changes in partnership allocations arising from a change in the partners' interests.* A qualified organization's interest in a partnership that it acquires from another qualified organization is treated as a continuation of the prior qualified organization partner for purposes of applying the fractions rule. Changes in partnership allocations that result from other transfers or shifts of partnership interests will be closely scrutinized, but generally will be taken into account only in determining whether the partnership satisfies the fractions rule in the taxable year of the change and subsequent taxable years.

(2) *De minimis interest rule.* Section 514(c)(9)(B)(vi) does not apply to a partnership otherwise subject to that section if—

(i) Qualified organizations do not hold, in the aggregate, interests of greater than five percent in the capital or profits of the partnership; and

(ii) The qualified-organization partners participate on substantially the same terms as all other partners, or as all other similarly situated taxable partners owning substantial interests in the partnership.

(3) *De minimis allocations disregarded*—(i) *General rule.* A qualified organization's fractions rule percentage of the partnership's items of

loss and deduction, other than nonrecourse and partner nonrecourse deductions, that are allocated away from the qualified organization and to other partners in any taxable year are treated as having been allocated to the qualified organization for purposes of the fractions rule if—

(A) The qualified organization's fractions rule percentage share of those items of loss or deduction is *de minimis* in amount; and

(B) The allocation was neither planned nor motivated by tax avoidance.

(ii) *De minimis amount defined.* For purposes of paragraph (k)(3)(i) of this section, a *de minimis* amount is the lesser of—

(A) One percent of the partnership's aggregate items of gross loss and deduction for the year; or

(B) \$20,000.

(4) *Anti-abuse rule.* The purpose of the fractions rule is to limit the transfer of tax benefits from tax-exempt partners to taxable partners. This section may not be applied in a manner that is inconsistent with the purpose of the fractions rule.

(l) [Reserved]

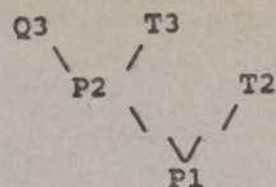
(m) *Tiered partnerships*—(1) *In general.* If a qualified organization holds an indirect interest in real property through one or more tiers of partnerships (a chain), the qualified organization will be eligible for the benefits of section 514(c)(9) only if—

(i) The avoidance of tax is not a principal purpose for investing in the tiered-ownership structure (investing in separate real properties through separate partnerships or chains of partnerships so that section 514(c)(9)(E) is, effectively, applied on a property-by-property basis is not, in and of itself, a tax avoidance purpose); and

(ii) The qualified organization can demonstrate that the fractions rule is satisfied under any reasonable method.

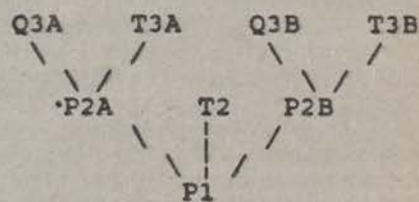
(2) *Examples.* The following examples illustrate the provisions of paragraph (m) of this section.

Example 1. Tiered partnerships—collapsing approach. (i) Q3, a qualified organization, is a partner with T3, a taxable individual, in second-tier partnership P2. P2, which does not own any encumbered real property, is a partner with T2, a taxable individual, in first-tier partnership P1. P1 owns encumbered real property. P1 allocates overall income: 40 percent to T2 and 60 percent to P2; and overall loss: 60 percent to T2 and 40 percent to P2. P2 allocates all overall income that it may be allocated from P1: 80 percent to T3 and 20 percent to Q3. P2 allocates all overall loss that it may be allocated from P1: 70 percent to T3 and 30 percent to Q3. The tiered-ownership structure is illustrated by the diagram set forth below.



(ii) Q3 may demonstrate that the fractions rule is satisfied by collapsing the tiered-ownership structure. After collapsing the tiered-ownership structure, the allocations that may be made to Q3 satisfy the fractions rule. (Q3 is the only qualified organization with a direct or indirect interest in P1.) Q3's greatest (effective) share of P1's overall income is 12 percent (20 percent of 60 percent) and its smallest (effective) share of P1's overall loss is also 12 percent (30 percent of 40 percent).

Example 2. Tiered partnerships—entity-by-entity approach. (i) Qualified organization Q3A is a partner with taxable individual T3A in second-tier partnership P2A. Qualified organization Q3B is a partner with taxable individual T3B in second-tier partnership P2B. P2A, P2B, and taxable individual T2 are partners in first-tier partnership P1. P1 owns encumbered real estate. The diagram below illustrates the tiered-ownership structure.

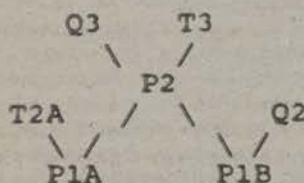


(ii) Partnerships P2A and P1 constitute one chain of partnerships (Chain A), and partnerships P2B and P1 constitute another chain of partnerships (Chain B). Q3A will be eligible for the benefits of section 514(c)(9) if it can demonstrate that the fractions rule is not violated by any partnership in Chain A. Q3B will be eligible for the benefits of section 514(c)(9) if it can demonstrate that the fractions rule is not violated by any partnership in Chain B.

(iii) Q3A may first demonstrate that the fractions rule is satisfied at the P1 partnership level. For this purpose, P2A and P2B are treated as qualified organizations. Provided that the income and loss allocations that may be made by P1 satisfy the fractions rule (treating P2A and P2B as qualified organizations), Q3A may then show that the fractions rule is satisfied by the allocations that may be made by P2A. As long as Q3A can demonstrate that the allocations that may be made by P1 and P2A satisfy the fractions rule, Q3A does not have to know how income and loss may be allocated by P2B (assuming Q3A has no direct or indirect interest in Chain B). Q3A's burden would not change even if T2 were not a partner in P1.

Example 3. Tiered partnerships— independent chains. (i) Q3 and T3 are partners in second-tier partnership P1A. T2A

and P2 are partners in first-tier partnership P1A. Q2 and P2 are partners in first-tier partnership P1B. P1A and P1B own encumbered real property. P2 does not own any real property. T2A and T3 are taxable partners; and Q2 and Q3 are qualified organizations. The diagram set forth below illustrates the tiered-ownership structure.



(ii) If the fractions rule is satisfied with respect to Chain A (P1A and P2) but it is not satisfied with respect to Chain B (P1B and P2) because of allocations that may be made to Q2 by P1B, Q3 will be eligible for the benefits of section 514(c)(9) with respect to the income it derives (indirectly) from P1A but not with respect to the income it derives (indirectly) from P1B.

(n) *Effective date*—(1) *In general.* Section 514(c)(9)(E), as amended by sections 2004(h) (1) and (2) of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. No. 100-647, applies generally with respect to property acquired by partnerships after October 13, 1987, and to partnership interests acquired after October 13, 1987.

(2) *General effective date of the regulations.* Section 1.514(c)-2(a) through (m) applies with respect to partnership agreements entered into after December 30, 1992, property acquired by partnerships, after December 30, 1992, and partnership interests acquired by qualified organizations after December 30, 1992 (other than a partnership interest that at all times after October 13, 1987 and prior to the acquisition was held by a qualified organization).

(3) *Periods after June 24, 1990, and prior to December 30, 1992.* To satisfy the requirements of section 514(c)(9)(E) with respect to partnership agreements entered into after June 24, 1990, property acquired by partnerships after June 24, 1990, and partnership interests acquired by qualified organizations after June 24, 1990 (other than a partnership interest that at all times after October 13, 1987, and prior to the acquisition was held by a qualified organization) to which paragraph (n)(2) of this section does not apply, paragraphs (a) through (m) of this section must be satisfied as of the first day that section 514(c)(9)(E) applies with respect to the partnership, property or acquired interest. For this purpose, paragraphs (a) through (m) will be treated as satisfied if sections I

thought VI of Notice 90-41, 90-1 C.B. 350, (see § 601.601(d)(2)(ii)(b) of this chapter) are satisfied.

(4) *Periods prior to the issuance of Notice 90-41.* With respect to partnerships commencing after October 13, 1987, property acquired by partnerships after October 13, 1987, and partnership interests acquired by qualified organizations after October 13, 1987, to which neither paragraph (n)(2) nor (n)(3) of this section applies, the Internal Revenue Service will not challenge an interpretation of section 514(c)(9)(E) that is reasonable in light of the underlying purposes of section 514(c)(9)(E) (as reflected in its legislative history) and that is consistently applied as of the first day that section 514(c)(9)(E) applies with respect to the partnership, property or acquired interest. A reasonable method includes a method that substantially complies with either sections I through VI of Notice 90-41 or paragraphs (a) through (m) of this section.

(5) *Material modifications to partnership agreements.* A material modification will cause a partnership agreement to be treated as a new partnership agreement in appropriate circumstances for purposes of this paragraph (n).

M.P. Dolan.

Acting Commissioner of Internal Revenue.

[FR Doc. 92-30430 Filed 12-29-92; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Part 1 and 15a

[IA-107-91]

RIN 1545-AQ48

Like-kind Exchanges—Coordination With Section 453; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to the coordination of section 1031(a)(3) with section 453 concerning like-kind exchanges of property.

DATES: The public hearing originally scheduled for Wednesday, January 6, 1993, beginning at 10 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-622-6803, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 1031 of the

Internal Revenue Code. A notice of public hearing appearing in the *Federal Register* for Monday, November 2, 1992 (57 FR 49436), announced that the public hearing on proposed regulations under section 1031 of the Internal Revenue Code would be held on Wednesday, January 6, 1993, beginning at 10 a.m., in the Internal Revenue Service Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

The public hearing scheduled for Wednesday, January 6, 1993, has been cancelled.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 92-31619 Filed 12-29-92; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

28 CFR Part 5

[AG Order No. 1642-92]

RIN 1105

Fees Under the Foreign Agents Registration Act

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice is implementing a statutory requirement that the Department assess and collect fees for registrations required by, and other services provided pursuant to, the Foreign Agents Registration Act (Act). This rule establishes the initial fees and delegates authority to the Assistant Attorney General for the Criminal Division to adjust those fees from time to time to recover the costs of operating the Registration Unit. The rule also will revise the circumstances in which the Criminal Division will review proposed conduct of any present or prospective agent of a foreign principal and state its present enforcement intentions under the Act.

The proposed rule also allows registrants to file an original and two copies of documents required to be filed under the Act rather than multiple originals. The proposed rule will increase the cost of copies of documents filed under the Act provided to the public to fifty cents per page. This change reflects the increased cost to the Department of producing the copies. The proposed rule will establish fees to cover the cost of personnel and computer time for research requests and the cost to the public for a copy of the periodic report to the Congress. In

addition, the proposed rule provides for the administrative termination of registrations when the registrant is no longer able to file a final statement.

DATES: Written comments must be received on or before January 29, 1993.

ADDRESSES: Please submit written comments to Joseph E. Clarkson, Chief, Registration Unit, Internal Security Section, Criminal Division, United States Department of Justice, 1400 New York Avenue, NW., room 9300, Washington, DC 20530.

FOR FURTHER INFORMATION CONTACT: Joseph E. Clarkson, Chief, Registration Unit, Internal Security Section, Criminal Division, United States Department of Justice, 1400 New York Avenue, NW., room 9300, Washington, DC 20530, telephone (202) 514-1216, facsimile (202) 514-2836. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Under the Act, 22 U.S.C. 611-621, agents of foreign principals are required to register with the Department of Justice. Title I of Public Law 102-395 requires the Attorney General to establish and collect fees to recover the cost of administering the Registration Unit.

The Registration Unit accepts the filing of required registration statements, administers the registration process and makes available to the public the registration statements. The fees imposed by this rule are designed to recover the costs of the Registration Unit from the registrants, prospective registrants, and public users of the documents filed, and relieve taxpayers of the burden of supporting this function.

The fees are determined by calculating the costs of the operation and administration of the Registration Unit and allocating those costs between requests for statements of the enforcement posture of the Department, initial, supplemental and final registration statements, and other filings, copies and services. The costs will change over time to reflect the workload of the Registration Unit. Accordingly, the Assistant Attorney General is authorized to change these fees from time to time to reflect the current costs of operating and administering the Registration Unit and to recover those costs from registrants and public users of these services.

The proposed rule also lessens the burden on registrants in meeting the filing requirements of the Act by allowing them to file copies of registration statements rather than multiple originals. It also will enable the Department to terminate registrations

when the registrant is unable to file the appropriate forms.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does it have federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 28 CFR Part 5

Aliens; Foreign relations; Reporting and recordkeeping requirements; Security measures.

Accordingly, it is proposed that part 5 of title 28 of the Code of Federal Regulations be amended as follows:

PART 5—ADMINISTRATION AND ENFORCEMENT OF THE FOREIGN AGENTS REGISTRATION ACT OF 1938, AS AMENDED

1. The authority citation for part 5 is revised to read as follows:

Authority: 28 U.S.C. 509, 510; 5 U.S.C. 301; Section 1, 56 Stat. 248, 257; 22 U.S.C. 620; title I, Pub. L. 102-395.

2. Section 5.2 is revised to read as follows:

§ 5.2 Inquiries concerning application of the Act.

(a) *General.* Any present or prospective agent of a foreign principal, or the agent's attorney, may request from the Assistant Attorney General a statement of the present enforcement intentions of the Department of Justice under the Act with respect to any presently contemplated activity, course of conduct, expenditure, receipt of money or thing of value, or transaction, and specifically with respect to whether the same requires registration and disclosure pursuant to the Act, or is excluded from coverage or exempted from registration and disclosure under any provision of the Act.

(b) *Anonymous, Hypothetical, Non-party and Ex post facto review requests excluded.* The entire transaction which is the subject of the review request must be an actual, as opposed to hypothetical, transaction and involve disclosed, as opposed to anonymous, agents and principals. Review requests must be submitted by a party to the transaction or the party's attorney, and have no application to a party that does not join in the request. A review request may not involve only past conduct.

(c) *Fee.* All requests for statements of the Department's present enforcement intentions must be accompanied by a

non-refundable filing fee submitted in accordance with § 5.5.

(d) *Address.* A review request must be submitted in writing to the Assistant Attorney General, Criminal Division, Attention: Chief, Registration Unit. The mailing address is 1400 New York Avenue, NW., room 9300, Washington, DC 20530.

(e) *Contents.* A review request shall be specific and contain in detail all relevant and material information bearing on the actual activity, course of conduct, expenditure, receipt of money or thing of value, or transaction for which review is requested. There is no prescribed format for the request, but each request must include: (1) The identity(ies) of the agent(s) and foreign principal(s) involved; (2) the nature of the agent's activities for or in the interest of the foreign principal; (3) a copy of the existing or proposed written contract with the foreign principal or a full description of the terms and conditions of each existing or proposed oral agreement; and (4) the applicable statutory or regulatory basis for the exemption or exclusion claimed.

(f) *Certification.* If the requesting party is an individual, the review request must be signed by the prospective or current agent, or, if the requesting party is not an individual, the review request must be signed on behalf of each requesting party by an officer, a director, a person performing the functions of an officer or a director of, or an attorney for, the requesting party. Each such person signing the review request must certify that the review request contains a true, correct and complete disclosure with respect to the proposed conduct.

(g) *Additional information.* Each party shall provide any additional information or documents the Criminal Division may thereafter request in order to review a matter. Any information furnished orally shall be confirmed promptly in writing, signed by the same person who signed the initial review request and certified to be a true, correct and complete disclosure of the requested information.

(h) *Outcomes.* After submission of a review request, the Criminal Division, in its discretion, may state its present enforcement intention under the Act with respect to the proposed conduct; may decline to state its present enforcement intention; or, if circumstances warrant, may take such other position or initiate such other action as it considers appropriate. Any requesting party or parties may withdraw a review request at any time. The Criminal Division remains free, however, to submit such comments to the requesting party or parties as it

deems appropriate. Failure to take action after receipt of a review request, documents or information, whether submitted pursuant to this procedure or otherwise, shall not in any way limit or stop the Criminal Division from taking any action at such time thereafter as it deems appropriate. The Criminal Division reserves the right to retain any review request, document or information submitted to it under this procedure or otherwise and to use any such request, document or information for any governmental purpose.

(i) *Time for response.* The Criminal Division shall respond to any review request within 30 days after receipt of the review request and of any requested additional information and documents.

(j) *Written decisions only.* The requesting party or parties may rely only upon a written Foreign Agents Registration Act review letter signed by the Assistant Attorney General or his delegate.

(k) *Effect of review letter.* Each review letter can be relied upon by the requesting party or parties to the extent the disclosure was accurate and complete and to the extent the disclosure continues accurately and completely to reflect circumstances after the date of issuance of the review letter.

(1) *Compliance.* Neither the submission of a review request, or its tendency, shall in any way alter the responsibility of the party or parties to comply with the Act.

3. Section 5.3 is amended by removing the word "duplicate" from the first sentence and substituting the word "triplicate" in its place, and inserting after the first sentence, a sentence that reads as follows: "An original document and two duplicated meeting the requirements of rule 1001(4), Federal Rules of Evidence, shall be deemed to meet this requirement."

4. Section 5.5 is added to read as follows:

§ 5.5 Registration fees.

(a) A registrant shall pay a registration fee with each initial registration statement (Form CRM-153) filed under § 5.200 and each supplemental registration statement (Form CRM-154) under § 5.203 at the time such registration statement is filed. The registration fee shall be paid by United States postal money order or by cashiers or certified check payable to "FARA Registration Unit".

(b) Payment of fees shall accompany any order for copies or request for information, and all applicable fees shall be collected before copies or information will be made available. Payment shall be made by United States

postal money order or by cashiers or certified bank check made payable to "FARA Registration Unit".

(c) The fees shall be as follows:

(1) For initial registration statements (Form CRM-153) under § 5.200: \$305.00 per foreign principal;

(2) For supplemental registration statements (Form CRM-154) under § 5.203: \$305.00 per foreign principal;

(3) For statements of present enforcement intentions under § 5.2: \$96.00 per review request;

(4) For Exhibits A and B (Forms CRM-155 & CRM-157) under § 5.201(a)(1) and (2): \$305.00 per foreign principal not currently reported under § 5.200 or § 5.203;

(5) For Exhibits C and D (no forms) under § 5.201: no fee;

(6) For short form registration statements (Form CRM-156) under § 5.202: no fee;

(7) For amendments (Form CRM-158) under § 5.204: no fee;

(8) For each quarter hour of search time under § 5.601 (including computer operator/programmer time): \$4.00;

(9) For copies of registration statements and supplements, amendments, exhibits thereto, dissemination reports, and copies of political propaganda and other materials contained in the public files, under § 5.601: fifty cents (\$.50) per copy of each page of the material requested;

(10) For copies of registration statements and supplements, amendments, exhibits thereto, dissemination reports, and copies of political propaganda and other materials contained in the public files, produced by computer, such as tapes or printouts, under § 5.601: actual direct cost of producing the copy, including the apportionable costs of operator/programmer salary; and

(11) For computer searches of records through the use of existing programming: direct actual costs, including the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a request and the costs of operator/programmer salary apportionable to the search.

(d) The cost of delivery of any document by the Registration Unit by any means other than ordinary mail shall be charged to the requester at a rate sufficient to cover the expense to the Registration Unit.

(e) The Assistant Attorney General is hereby authorized to adjust the fees established by this section from time to time to reflect and recover the costs of the administrative of the Registration Unit under the Act.

(f) Fees collected under this provision shall be available for the support of the Registration Unit.

(g) Notwithstanding § 5.3 of this part, no document required to be filed under the Act shall be deemed to have been filed unless it is accompanied by the applicable fee.

5. Section 5.205 is amended by adding a new paragraph (d) to read as follows:

§ 5.205 Termination of registration.

(d) Registration under the Act may be terminated upon a finding that the registrant is unable to file the appropriate forms to terminate the registration as a result of the death, disability, or dissolution of the registrant.

6. Section 5.601 is revised to read as follows:

§ 5.601 Copies of records and information available.

(a) Copies of registration statements and supplements, amendments, exhibits thereto, dissemination reports, and copies of political propaganda and other materials contained in the public files, may be obtained from the Registration Unit upon payment of a fee as prescribed in § 5.5 of this part.

(b) Information as to the fee to be charged for copies of registration statements and supplements, amendments, exhibits thereto, dissemination reports, and copies of political propaganda and other materials contained in the public files, or research into and information therefrom, and the time required for the preparation of such documents or information may be obtained upon request to the Registration Unit. Fee rates are established in § 5.5 of this part.

(c) The Registration Unit may, in its discretion, conduct computer searches of records through the use of existing programming upon written request. Information as to the fee for the conduct of such computer searches, and the time required to conduct such computer searches, may be obtained upon request to the Registration Unit. A written request for computer searches of records shall include a deposit in the amount specified by the Registration Unit, which shall be the Registration Unit's estimate of the actual fees. The Registration Unit is not required to alter or develop programming to conduct a search. Fee rates are established in § 5.5 of this part.

7. Section 5.1101 is added to read as follows:

§ 5.1101 Copies of the Report of the Attorney General.

Copies of the Report of the Attorney General to the Congress on the Administration of the Foreign Agents Registration Act of 1938, as amended, shall be sold to the public by the Registration Unit, as available, at a charge not less than the actual cost of production and distribution.

Dated: December 17, 1992.

William P. Barr,
Attorney General.

[FR Doc. 92-31400 Filed 12-29-92; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****30 CFR Part 920****Maryland Permanent Regulatory Program; Effluent Standards**

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing receipt and requesting comments on a proposed amendment to the Maryland permanent regulatory program (hereinafter referred to as the Maryland program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment adopts, by reference, applicable State laws and regulations, the Federal Clean Water Act, as amended, and the U.S. Environmental Protection Agency's regulations, 40 CFR part 434, to regulate discharges of water from areas disturbed by coal mining.

This document sets forth the times and locations that the Maryland program and the proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the amendment and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4 p.m. on January 29, 1993 to ensure consideration in the rulemaking process. If requested, a public hearing on the amendment will be held at 9 a.m. on January 25, 1993. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on January 14, 1993.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to Robert J. Biggi, Director, Harrisburg Field

Office, at the address listed below.

Copies of the Maryland program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays.

Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSM's Harrisburg Field Office.

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782-4036

Maryland Bureau of Mines, 160 South Water Street, Frostburg, Maryland 21532, Telephone (301) 689-4136

A public hearing, if held, will be at the Penn Harris Motor Inn and Convention Center at the Camp Hill Bypass and U.S. Routes 11 and 15, Camp Hill, Pennsylvania, or at some other location in the area of interested parties.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Harrisburg Field Office, (717) 782-4036.

SUPPLEMENTARY INFORMATION:**I. Background on the Maryland Program**

The Secretary of the Interior approved the Maryland program on February 18, 1982. Information on the background of the Maryland program including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Maryland program can be found in the February 18, 1982, *Federal Register* (47 FR 7214-7217). Subsequent actions concerning amendments to the Maryland program are in 30 CFR 920.15 and 30 CFR 920.16.

II. Discussion of Amendment

The Maryland Bureau of Mines submitted a program amendment to OSM on October 21, 1992. The amendment (Administrative Record Number MD-559.04) deletes the current provisions of the Code of Maryland Regulations (COMAR), 08.13.09.24B (Water Quality Standards and Effluent Limitations), except subsection (9) which is renumbered as subsection (2). The amendment replaces the deleted language and is cited as COMAR 08.13.09.24B(1). The amendment incorporates by reference applicable Federal and State statutes, as well as implementing regulations, by using language similar to the provisions in the

Federal rule at 30 CFR 816.42

(Hydraulic balance: Water quality standards and effluent limitations), to regulate water discharges from coal mining areas. The proposed amendment states:

(1) Discharges of water from areas disturbed by surface mining shall be made in compliance with applicable State laws and regulations, the Federal Clean Water Act, as amended, and with effluent limitations for coal mining promulgated by the U.S. Environmental Protection Agency set forth in 40 CFR Part 434.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comments on whether the amendment proposed by Maryland satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Maryland program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m. on January 14, 1993. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public

hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the Harrisburg Field Office by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made part of the Administrative Record.

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.13 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for the rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(c) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 920

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 5, 1992.

Jeffrey D. Jarrett,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 92-31375 Filed 12-29-92; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 925

Missouri Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Missouri permanent regulatory program (the "Missouri program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to provisions of the Missouri regulations pertaining to signs and markers, surface and underground hydrology, coal waste disposal, fish and wildlife, backfilling and grading, revegetation, land use, roads, coal exploration, mining near public roads,

permit confidentiality, threatened and endangered species, buffer zones, sediment ponds, acid- and toxic-forming materials, operations and reclamation plans, public notice, permit application requirements, performance bonding, release of reclamation liability, bond forfeiture, assessments to the land reclamation fund, definitions, notices of violation, and penalty assessment. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards, clarify ambiguities, and improve operational efficiency.

This notice sets forth the times and locations that the Missouri program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., c.s.t. January 29, 1993. If requested, a public hearing on the proposed amendment will be held on January 25, 1993. Requests to present oral testimony at the hearing must be received by 4 p.m., c.s.t. on January 14, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to Jerry R. Ennis at the address listed below.

Copies of the Missouri program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Kansas City Field Office.

Jerry R. Ennis, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 934 Wyandotte, room 500, Kansas City, MO 64105 Telephone: (816) 374-6405.

Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102, Telephone: (314) 751-4041.

FOR FURTHER INFORMATION CONTACT: Jerry R. Ennis, telephone: (816) 374-6405.

SUPPLEMENTARY INFORMATION:

I. Background on the Missouri Program

On November 21, 1980, the Secretary of Interior conditionally approved the Missouri program. General background information on the Missouri program, including the Secretary's findings, the

disposition of comments, and the conditions of approval of the Missouri program can be found in the November 21, 1980, *Federal Register* (45 FR 77017). Subsequent actions concerning Missouri's program and program amendments can be found at 30 CFR 925.12, 925.15, and 925.16.

II. Discussion of Proposed Amendment

By letter dated October 19, 1992 (Administrative Record No. MO-555), Missouri submitted a proposed amendment to its program pursuant to SMCRA. Missouri submitted the proposed amendment with the intent of satisfying the required program amendments at 30 CFR 925.16(f)(1) (57 FR 44660); 925.16(g)(9), (10), (11), (13), (14), (15), (16), (17), (18), and (19) (56 FR 21281); and 925.16(p)(1) through (21) (57 FR 44660). Missouri identified additional regulations that required amendment in order to clarify their purposes and to be consistent with their Federal counterparts. The amendment also contains nonsubstantive revisions to eliminate editorial and typographical errors and to accomplish necessary recodification required by the addition or deletion of provisions.

The substantive changes proposed by Missouri are discussed briefly below:

(1) Bonded Area Markers

10 CSR 40-3.010(5): Missouri proposes to add the requirement that bond released segments of a permit area shall be marked at the time of the release inspection unless they are already delineated by the natural or man-made boundaries.

(2) Water Quality Standards and Effluent Limitations

10 CSR 40-3.040 and 3.200(2)(A)1: Missouri proposes to delete the exclusion of certain revegetated areas from total suspended solids effluent limitations.

(3) Sedimentation Ponds

10 CSR 40-3.040 and 3.200(6)(H), (T), and (U): Missouri proposes to revise these provisions to require that sediment ponds be designed, constructed, and maintained to provide periodic sediment removal sufficient to maintain adequate volume for the design event; to correct a referenced citation; and to require that removal of sedimentation ponds must be authorized and that in no case shall the structure be removed sooner than 2 years after the last augmented seeding.

(4) Acid- and Toxic-Forming Materials

10 CSR 40-3.040(9): Missouri proposes to revise this provision to

require that drainage from these materials into ground and surface water be avoided by identifying and burying and/or treating when necessary, materials which may adversely affect water quality or be detrimental to vegetation or to public health and safety if not buried and/or treated.

(5) Permanent and Temporary Impoundment Dams and Embankments

10 CSR 40-3.040 and 3.200(10)(I): Missouri proposes to revise this provision by adding the requirement that certification reports include a discussion on any appearance of instability, structural weakness, or other hazardous conditions.

(6) Covering Coal and Acid- and Toxic-Forming Materials

10 CSR 40-3.110(3)(A): Missouri proposes to revise this provision to state that exposed coal seams and combustible materials, including coal processing waste, shall be defined as being adequately covered with a minimum of 4 feet of nontoxic-, nonacid-producing materials unless otherwise demonstrated. In addition, combustible materials and coal processing waste shall not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution.

(7) Regrading or Stabilizing Rills and Gullies

10 CSR 40-3.110(6)(B): Missouri proposes to add a requirement that on areas that have been previously mined where topsoil is not available, the requirements of regrading or stabilizing rills and gullies, pursuant to 10 CSR 40-3.110(6)(A), apply after final grading, except that the area need not be topsoiled.

(8) Stocking Rates of Trees, Shrubs, and Half-shrubs

10 CSR 40-3.120 and 3.270 (7)(C)2, and (C)3: Missouri proposes to revise this provision to require that stocking rates on the revegetated area shall approximate the stocking and ground cover approved in the permit.

(9) Post-Mining Land Use Requirements

10 CSR 40-3.130(2) and (3): Missouri proposes to revise these provisions to require that when determining the premining uses of land, the premining uses of land to which the postmining land use is compared shall be those uses which the land previously supported, if the land had not been previously mined and has been properly managed. The postmining land use for land that has been previously mined and not

reclaimed shall be judged on the basis of the land use that existed prior to and mining, provided that, if the land cannot be reclaimed to the land use that existed prior to any mining because of the previously mined condition, the postmining land use shall be judged on the basis of the highest and best use that can be achieved which is compatible with surrounding areas and does not require the disturbance of areas previously unaffected by mining. In addition, concerning the criteria for alternative postmining land uses, higher and better uses may be approved by the regulatory authority as alternative postmining land uses after consultation with the landowner or the land management agency having jurisdiction over the lands, if the proposed uses meet the following criteria: There is a reasonable likelihood for achievement of the use; the use does not present any actual or probably hazard to public health or safety, or threat of water diminution or pollution; the use will not be impractical or unreasonable; will not be inconsistent with applicable land use policies or plans; will not involve unreasonable delay in reclamation; and will not cause or contribute to violation of Federal, State or local law.

(10) Class I Roads

10 CSR 40-3.140(1)(A) and (D): Missouri proposes to revise these Class I road provisions to additionally require the control or prevention of dust occurring on other exposed surfaces, not just road surfaces. In addition, Missouri requires that construction or reconstruction of Class I roads must be certified in a report to the State director. The report shall indicate that the Class I road has been constructed or reconstructed as designed and in accordance with the approved plan.

(11) Class II Roads

10 CSR 40-3.140(8)(D)1: Missouri proposes to revise this provision to require that construction or reconstruction of Class II roads must be certified in a report to the State director. The report shall indicate that the Class II road has been constructed or reconstructed as designed and in accordance with the approved plan.

(12) Procedures for Prohibitions and Limitations on Mining in Certain Areas

10 CSR 40-5.010(3)(D): Missouri proposes to revise this provision to require in part that where the applicant proposes to close or relocate any public road, the commission or State director or the appropriate public road authority designated by the State director shall require the applicant to obtain necessary

approvals of the public road authority with jurisdiction, and provide public notice in the newspaper of general circulation in the affected locale. If a hearing is requested, a public notice of the location, date, and time of the hearing shall be published in a newspaper of general circulation in the affected locale 2 weeks prior to the hearing.

(13) Permit Application-Identification of Interests

10 CSR 40-6.030 and 6.100(1)(G): Missouri proposes to add the requirement that if requested by the applicant, any information required by this subsection which is not on public file pursuant to State law shall be held in confidence by the State director, as provided under 10 CSR 40-6.070(6)(C)(2).

(14) Geologic Test Borings and Core Samples

10 CSR 40-6.040(5)(B)1.C: Missouri proposes to revise this provision to delete the requirement for testing samples for compaction and erodibility.

(15) Threatened and Endangered Species

10 CSR 40-6.040 and 6.110(11)(E): Missouri proposes to revise these provisions to clarify the applicability of these regulations under the Endangered Species Act of 1973 as amended (16 U.S.C. 1531, *et seq.*) or those species or habitats protected by the State of Missouri Rare and Endangered Species as determined by the Missouri Department of Conservation.

(16) Maps

10 CSR 40-6.040(14)(L): Missouri proposes to add the requirement that all buffer zones as defined at 10 CSR 40-8.010(1)(A) must be identified on permit maps.

(17) Operations Plan

10 CSR 40-6.050(2)(B)4 and (5)(B)5 and (5)(B)8: Missouri proposes to clarify that required narratives concerning coal and noncoal wastes should be in accordance with the appropriate sections of 10 CSR 40-3.080.

(18) Fish and Wildlife Plan

10 CSR 40-6.050(7)(A) and 6.120(12)(A): Missouri proposes to clarify that the plan requirements must be consistent with the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq.*)

(19) Informal Conferences

10 CSR 40-6.070(5)(A)3 and (B): Missouri proposes to revise this

provision to require that requests for informal conferences be filed not later than 30 days after the last publication of the newspaper advertisement in subsection (2)(A) of this rule.

(20) Improvidently Issued Permit

10 CSR 40-6.070(11)(A)1: Missouri proposes to revise this provision to require that the State director review the circumstances under which a permit was issued where the State director has reason to believe a surface coal mining and reclamation permit was improvidently issued.

(21) Self-Bonding Definition

10 CSR 40-7.011(1)(C): Missouri proposes to revise this definition to mean an indemnity agreement in a sum certain executed by the applicant or by the applicant and any corporate guarantor and made payable to the State of Missouri, with or without separate surety.

(22) Requirement to File a Bond

10 CSR 40-7.011(2)(A): Missouri proposes to revise this provision to require that the performance bond shall be conditioned upon the faithful performance of all the requirements of the Surface Coal Mining Law, the regulatory program, the permit and the reclamation plan, and bonded liability shall continue until reclamation is completed and approved by the commission.

(23) Incremental Bonding

10 CSR 40-7.011(3)(D): Missouri proposes to add the requirement that the operator shall identify the initial and successive areas or increments for bonding on the permit application map submitted for approval as provided in the application and shall specify the bond amount to be provided for each area or increment.

(24) Bond Amounts

10 CSR 40-7.011(4)(F),(G),(H), and (I): Missouri proposes to revise this provision to require that the amount of a full cost bond and the terms of each acceptance of the applicant's bond shall be adjusted by the commission from time to time as affected land acreages are increased or decreased or where the cost of future reclamation changes.

Missouri proposes that the State director shall provide notice of any proposed adjustment to the bond amount to the permittee, the surety, and any person with a property interest in collateral who has requested notification; and shall provide the permittee an opportunity for an informal conference on the adjustment.

Missouri proposes that a permittee may request reduction of the amount of the performance bond upon submission of evidence to the regulatory authority proving that the permittee's method of operation or other circumstances reduces the estimated cost for the regulatory authority to reclaim the bonded area. Bond adjustments which involve undisturbed land or revision of the cost estimate of reclamation are not considered bond releases subject to procedures of 10 CSR 40-7.021.

Missouri proposes that in the event that an approved permit is revised in accordance with 10 CSR 40-6, the State director shall review the bond for adequacy and, if necessary, shall require adjustment of the bond to conform to the permit as revised.

(25) Surety Bonds

10 CSR 40-7.011 (5)(A)2 and (5)(A)8: Missouri proposes to revise the exception to the noncancellability of a surety bond to provide that surety bond coverage for lands not disturbed may be canceled if the surety provides written notification and the State director is in agreement. Also, that the State director shall advise the surety, within 30 days after receipt of a notice to cancel bond, whether the bond may be canceled on an undisturbed area.

Missouri proposes to add the requirement that the bond shall provide a mechanism for a bank or surety company to give prompt notice to the regulatory authority and the permittee of any action filed alleging the insolvency or bankruptcy of the surety company, the bank, or the permittee, or alleging any violations which would result in suspension or revocation of the surety or bank charter or license to do business.

(26) Personal Bonds

10 CSR 40-7.011 (5)(B)2. and (5)(B)7: Missouri proposes to revise the provisions to require in part that certificates of deposit be made payable to or assigned to the State of Missouri, both in writing and upon the records of the bank issuing the certificates, and shall be automatically renewable at the end of the term of the certificate. If assigned, banks issuing the certificate(s) must waive all rights of set off or liens against the certificate(s).

Missouri proposes to add the requirement that the bond shall provide a mechanism for a bank or surety company to give prompt notice to the regulatory authority and the permittee of any action filed alleging the insolvency or bankruptcy of the surety company, the bank or the permittee, or alleging any violations which would

result in suspension or revocation of the surety or bank charter or license to do business.

Missouri proposes to also revise this provision to require immediate compliance with 10 CSR 40-3.150(4) in the event a cessation order is issued. The operator shall also immediately begin to conduct reclamation operations in accordance with the reclamation plan.

(27) Self-Bonding

10 CSR 40-7.011 (5)(D)2.C. and (5)(D)2.D., and (5)(D)5.A. and (5)(D)5.B: Missouri proposes to revise these provisions to require that: an applicant submit financial information showing a ratio of total liabilities to net worth of two and one-half times or less and a ratio of current assets to current liabilities of 1.2 times or greater; the applicant's fixed assets in the United States total at least \$20 million and the applicant has a ratio of total liabilities to net worth of two and one-half times or less and a ratio of current assets to liabilities of 1.2 times or greater; and that the applicant submit financial statements for the last complete fiscal year accompanied by a report prepared by an independent certified public accountant in conformity with generally accepted accounting principles.

Missouri proposes to revise its provision to require that self-bond indemnity agreements be executed and signed by all persons and parties who are to be bound by it, including the parent corporate guarantor and/or a third party nonparent corporate guarantor and shall bind each jointly and severally.

Missouri proposes to revise its provision to require that corporations applying for a self-bond, and parent and nonparent corporations guaranteeing a permittee's self-bond, shall submit an indemnity agreement signed by two corporate officers who are authorized to bind the corporations.

(28) Duration and Release of Reclamation Liability

10 CSR 40-7.021 (2)(B)1, and (2)(B)4., and (2)(D)2: Missouri proposes to revise these provisions to require that an area shall qualify for release of Phase II liability when a permanent vegetative cover that meets the approved reclamation plan and is sufficient to control erosion is in place and no further augmentation of the vegetation is necessary. The revision would further require that a plan for achieving Phase III release has been approved for the area requested for release, and the plan has been incorporated into the permit, except for prime farmland soils in

which case the soil productivity for prime farmlands shall have been returned to the equivalent levels of yield as nonmined land of the same soil type in the surrounding area under equivalent management practices as determined from the soil survey performed pursuant to 10 CSR 40-4.030.

Missouri proposes to require that full cost bonds shall have up to 60-percent released when Phase I liability is released. After completion of Phase II, the State director shall retain the amount of bond for the vegetated area which would be sufficient to cover the cost of reestablishing vegetation if established by a third party and the amount of bond necessary to abate any water pollution caused by the contributing of suspended solids to stream flow or runoff outside the permit area in excess of the requirements set by chapter 3. Finally, 100-percent of the bond shall be released when Phase III liability is released.

(29) Bond Forfeiture

10 CSR 40-7.031(3)(B): Missouri proposes to add an exception concerning conditions of the regulatory program. The performer of reclamation shall demonstrate they have the ability to satisfy the conditions, except that where the commission may approve partial releases authorized under 10 CSR 40-7.021(2), no surety, issuer, or guarantor liability shall be released until successful completion of all reclamation under the terms of the permit, including applicable liability periods of 10 CSR 40-7.021(1).

(30) Definitions

10 CSR 40-8.010(1)(A)13 and 71: Missouri proposes to add a definition of buffer zone that would provide a boundary which establishes a limit of mining related disturbance beyond which a variance to the regulations must be obtained before disturbance.

Missouri proposes to revise the definition of previously mined area to exclude highwalls created after August 3, 1977, and all fully reclaimed sites.

(31) Enforcement of Notices of Violation

10 CSR 40-8.030(7)(A): Missouri proposes to revise this provision to require that the commission or State director may modify, terminate, or vacate a notice of violation and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the person to whom it was issued in accordance with 10 CSR 40-8.040.

(32) Procedures for Informal Assessment Conference

10 CSR 40-8.040(8)(K): Missouri proposes to revise this provision to require that if the settlement agreement is disapproved, or if payment is not made within 30 days of commission approval, the State director shall refer the agreement to the commission so that they might enforce the agreement or rescind it and affirm, raise, lower, or vacate the penalty within 30 days of the rescission.

(33) Habitual Violator

10 CSR 40-8.040(9): Missouri proposes to add this provision to define a habitual violator as a person, permittee, or operator that has established a pattern of violations of any requirements of the Surface Coal Mining Law, its promulgated regulations, or the permit. The pattern of violations is described in 10 CSR 40-7.031(1)(F).

Missouri proposes to require that if a person, permittee, or operator is found to be a habitual violator of the Surface Coal Mining Law, land reclamation laws of other States, or other Missouri or Federal laws pertaining to land reclamation, a civil penalty for the same violation by the attorney general and a judicial assessment of a civil penalty may be made for the same violation in addition to the assessment of an administrative penalty.

Additionally, if a person, permittee, or operator is not a habitual violator, the administrative penalty shall preclude the [assessment of a] civil penalty by the attorney general and the judicial assessment of a civil penalty.

(34) Payment of the Penalty

10 CSR 40-8.040 (10) and (11): Missouri proposes to add the provision that any penalty assessed under this rule shall be paid to the county treasurer of the county where the violation occurred and credited to the school fund.

Missouri further proposes that the regulations in this rule may be used for the assessment of civil or administrative penalties.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Missouri program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in

this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.s.t. January 14, 1993. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment having been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

Compliance with the National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National

Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Compliance with Executive Order No. 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 (Reduction of Regulatory Burden) for actions related to approval or conditional approval of State regulatory programs, actions, and program amendments. Therefore, preparation of a Regulatory Impact Analysis is not necessary and OMB regulatory review is not required.

Compliance With the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Compliance With Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsection (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

Compliance With the Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

List of Subjects in 30 CFR Part 916

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 9, 1992.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 92-31376 Filed 12-29-92; 8:45 am]

BILLING CODE 4310-05-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92-260; FCC 92-500]

Cable Home Wiring

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; correction.

SUMMARY: This document contains an addition to the Notice of Proposed Rule Making published Tuesday, November 17, 1992 (57 FR 54209) (FR Doc. 92-27605). The adoption of such rules is mandated by section 16(d) of the Cable Television Consumer Protection and Competition Act of 1992. The rule making is intended to satisfy the mandate of that Act by enabling subscribers to acquire the home wiring upon termination of services. The Initial Regulatory Flexibility Analysis was omitted from the original proposed rule.

FOR FURTHER INFORMATION CONTACT: Mary Beth Richards, Phone: (202) 632-7090.

SUPPLEMENTARY INFORMATION:

Background

The notice that is the subject of this correction is required by the Cable Television Consumer Protection and Competition Act of 1992. Public Law No. 102-385, 106 Stat. 1460 (1992). The full text of this Commission action is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this action may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452-1422, 1114 21st Street, Washington, DC 20036.

Need for Correction

To establish compliance with the Regulatory Flexibility Act (Pub. L. No. 96-354, 94 Stat. 1164, 50 U.S.C. Section 601 *et seq.* (1980).)

This correction should precede the list of subjects in column one, 57 FR 54210.

Initial Regulatory Flexibility Analysis
Reason for Action

This proceeding is being initiated in order to seek comment on the best way to implement section 16 of the Cable Consumer Protection and Competition Act of 1992, Public Law 102-385, relating to cable home wiring.

Objectives

The Commission's goal is to provide notice and opportunity to comment to members of the public regarding efficacious implementation of section 16 of the new Act.

Legal Basis

Authority of this proposed rule making is contained in section 4(i), 4(j) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303(r) and section 16 of the Cable Consumer Protection and Competition Act of 1992, Public Law 102-385 (1992).

Reporting, Recordkeeping and Other Compliance Requirements

The Commission is asking for comment on the treatment of cable home wiring once a subscriber terminates service.

Federal Rules That Overlap, Duplicate or Conflict With Proposed Rule

None.

Description, Potential Impact, and Number of Small Entities Involved

This rule making could require that subscribers have the option of acquiring ownership of their cable home wiring when they terminate service.

Any Significant Alternatives minimizing the Impact on Small Entities Consistent With the Stated Objectives

None.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 92-31609 Filed 12-29-92; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF INTERIOR**Fish and Wildlife Service****50 CFR Part 18**

RIN 1018-AB79

Marine Mammals; Incidental Take During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule, notice of public meetings and request for comments.

SUMMARY: The Fish and Wildlife Service (Service) is proposing regulations that would authorize for the next 5 years the incidental, unintentional take of small numbers of polar bear and walrus during oil and gas industry operations (exploration, development and production) year round in the Beaufort Sea and adjacent northern coast of Alaska.

Under provisions of the Marine Mammal Protection Act, the taking of these marine mammals may be allowed only if the Director of the Service finds, based on the best scientific evidence available, that the total of such taking for the 5 year period will have a negligible impact on these species and will not have an unmitigable adverse impact on the availability of these species for subsistence uses by Alaskan Natives. If these findings are made, the Service is required to establish specific regulations for the activity that set forth:

- (1) Permissible methods of taking;
- (2) Means of effecting the least practicable adverse impact on the species and their habitat and on the availability of the species for subsistence uses; and
- (3) Requirements for monitoring and reporting.

Through the preparation of a draft Environmental Assessment, the Service has proposed a finding that the total expected takings of polar bear and walrus during oil and gas industry exploration, development and production activities would have a negligible impact on these species, and there would be no unmitigable adverse impacts on the availability of these species for subsistence uses by Alaskan Natives.

DATES: Comments on the proposed rule must be received by March 15, 1993.

Public meetings on the proposed rule are scheduled as follows:

1. January 25, 1993, 7:30 p.m., Anchorage, Alaska
2. February 1, 1993, 7:30 p.m., Barrow, Alaska
3. February 2, 1993, 7:30 p.m., Nuiqsut, Alaska

4. February 4, 1993, 7:30 p.m., Kaktovik, Alaska

ADDRESSES: Written comments should be submitted by mail to Jon Nickles, Supervisor, Office of Marine Mammals Management, Fish and Wildlife Service, 4230 University Drive, suite 310, Anchorage, AK 99508. Comments may also be hand delivered to the same address. Comments and materials received in response to this proposal will be available for public inspection at this address during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday.

The public meetings will be held at the following locations:

1. Anchorage—U.S. Fish and Wildlife Service, Regional Office, Large Conference Room, First Floor, 1011 East Tudor Road, Anchorage, Alaska.
2. Barrow—North Slope Borough Assembly Chambers, Barrow, Alaska.
3. Nuiqsut—Kisik Community Center, Nuiqsut, Alaska.
4. Kaktovik—Kaktovik Community Center, Kaktovik, Alaska.

FOR FURTHER INFORMATION CONTACT: John Bridges, Office of Marine Mammals Management, Fish and Wildlife Service, 4230 University Drive, Suite 310, Anchorage, Alaska 99508, (907) 271-2343.

SUPPLEMENTARY INFORMATION:**Background**

Section 101(a)(5) of the Marine Mammal Protection Act (Act) gives the Secretary of the Interior (Secretary) authority to allow, on request by U.S. citizens [as defined in 50 CFR 18.27(c)] engaged in a specified activity (other than commercial fishing) in a specified geographical region the incidental, but not intentional, taking of small numbers of marine mammals. Permission may be granted for a period of five years or less.

The taking of marine mammals may be allowed only if the Service finds, based on the best scientific evidence available, that such takes will have a negligible impact on the species or stock and will not have an "unmitigable adverse impact" on the availability of the species or stock for subsistence uses. Also, regulations must be published that include permissible methods of taking and other means to ensure the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses. These regulations must include requirements for monitoring and reporting. After final regulations are established, Letters of Authorization (LOA) may be issued,

upon request, to individual entities to conduct activities pursuant to the regulations.

As a result of 1986 amendments to the Act, the Service on September 29, 1989, published a final rule (54 FR 40338) amending 50 CFR 18.27 (i.e., regulations governing small takes of marine mammals incidental to specified activities) that included, among other things, a revised definition of "negligible impact" and a new definition for "unmitigable adverse impact." Negligible impact is now defined as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." 50 CFR 18.27(c). Unmitigable adverse impact means "an impact resulting from the specified activity (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met." Id.

Oil and gas exploration, development and production activities conducted in marine mammal habitat risk violating the moratorium on the taking of marine mammals and therefore violating the terms of the Act. It is probable that in a period of 5 years, takes of polar bear or walrus will occur. Although there is no legal requirement for the oil and gas industry to obtain incidental take authority, they have chosen to seek authorization to avoid potential conflicts between their activities and the requirements of the Act.

Summary of Request

On December 17, 1991, BP Exploration (Alaska), Inc., for itself and on behalf of Amerada Hess Corporation, Amoco Production Company, ARCO Alaska, Inc., CGG American Service, Inc., Conoco Inc., Digicon Geophysical Corp., Exxon Corporation, GECO Geophysical Co., Halliburton Geophysical Services, Inc., Mobil Oil Corporation, Northern Geophysical of America, Texaco Inc., Unocal Corporation, and Western Geophysical Company (collectively referred to as "Industry" throughout the remainder of this document), petitioned the Service for the promulgation of regulations pursuant to section 101(a)(5) of the Act. The regulations sought would allow the

incidental, but not intentional, take of small numbers of polar bear (*Ursus maritimus*) and Pacific walrus (*Odobenus rosmarus divergens*) in the event that such a taking occurs in the course of oil and gas exploration, development or production activities during year-round operations in the Beaufort Sea, in Alaskan State waters, and OCS waters and the adjacent northern coast of Alaska.

Specifically, the offshore geographic region addressed by this proposed action is defined by a north/south line at Barrow, Alaska, including all Alaska state waters and the OCS waters and east of that line to the Canadian border. The onshore region is defined as that same north/south line at Barrow, 25 miles inland and east to the Canning River. Industry excluded the Arctic National Wildlife Refuge from its proposals.

Summary of Proposed Rule

The Service proposes specific regulations to allow the incidental, unintentional take of polar bear and Pacific walrus in the Beaufort Sea and northern coast of Alaska. The regulations would be in effect year round for a 5 year period expected to begin at the start of calendar year 1993 (i.e., 1993 through 1997) for entities conducting oil and gas industry activities. This proposed regulation does not authorize the intentional harassment, hunting, capturing or killing of polar bear or walrus. The regulations are designed to allow industry operations to continue while working under the provisions of the Act.

These regulations do not permit the actual activities associated with oil and gas exploration, development and production, but rather allow the incidental, unintentional take of the two marine mammal species. The Department of the Interior's Minerals Management Service and the Bureau of Land Management are responsible for permitting activities associated with oil and gas activities in Federal waters and on Federal lands, respectively, and the State of Alaska is responsible for activities on State lands and in State waters.

Concern has been directed at polar bear encounter incidents where human life is in jeopardy. When human activity occurs in polar bear habitat, polar bear/human encounters are possible. However, in over 20 years of industry activity in this area, only one polar bear has been killed for the protection of human life. Polar bear interaction training and knowledge of polar bear interaction plans will be required of each person operating under these

regulations. In cases where polar bears must be deterred or killed for the protection of human life or welfare, the Service has authority to allow such action under section 109(h)(1) of the Act.

The authorization to take polar bear and walrus is directed to incidents that occur between industry activities and the two species that cause minor disturbances to the marine mammals, especially those that may occur in the absence of any negligence or intentional action by a person carrying out an otherwise lawful activity.

The proposed regulations include requirements for monitoring and reporting and measures to effect the least practicable adverse impact on these species and their habitat and on the availability of these species for subsistence uses. These regulations are proposed based on an initial finding that exploration, development and production activities in this area may involve the taking of the two aforementioned species of marine mammal. The Service believes that the total impact of the takings will have a negligible impact on these species and on their availability for subsistence uses.

Subsequent to establishing regulations, a Letter of Authorization (LOA) would be required to conduct activities pursuant to these regulations. A LOA may be requested by each group or individual conducting an oil and gas industry related activity where there is the likelihood to taking polar bear or walrus. The proposed regulations require those who request a LOA to submit a plan to monitor the effects on polar bear and walrus that are present during the authorized activities. Also, an applicant for a LOA must identify, in a plan of cooperation, what measures have been taken to minimize adverse impacts on the availability of marine mammals for subsistence uses if the activity takes place in or near a traditional subsistence hunting area. Each request for a LOA will be evaluated on the specific activity and the specific location, and each LOA will be specifically conditioned for that activity and location.

Description of Activity

In accordance with 50 CFR 18.27, Industry has submitted three separate written petitions for the promulgation of incidental take regulations pursuant to section 101(a)(5) of the Act covering:

(1) Polar bear for exploration operations during the ice-covered period in coastal Arctic Alaska and the Beaufort Sea,

(2) Polar bear and walrus for open-water exploration operations in the Beaufort Sea and

(3) Polar bear and walrus for oil and gas development and production in Arctic Alaska.

Activities that are covered in the petition are exploration activities such as geological and geophysical surveys which include: Geotechnical site investigation, reflective seismic exploration, vibrator seismic data collection, airgun and watergun seismic data collection, explosives seismic data collection, and geological surveys and drilling operations. The latter include: Drillships, floating drill platforms such as the Kulluk, ice pads, artificial islands, caisson-retained islands, and two types of bottom-founded structures: (1) concrete island drilling system, and (2) single steel drilling caisson.

Industry documents indicate that exploratory activities for the open-water periods of 1993 through 1997 are primarily located in an area defined by a north/south line at Barrow and include all Alaska state waters and the OCS waters east of that line to the Canadian border. Estimates of the activities are approximately 28,200 vessel miles of seismic exploration, with as many as 10 vessels acquiring seismic data in the proposed area in any one year. From 3 to 12 geotechnical/geochemical programs are projected to be conducted over the time span that the regulations would be in effect. Exploratory drilling is estimated to be conducted at 2 to 19 locations over the 5 year period, utilizing drillships at 2 to 8 locations and bottom-founded structures at 3 to 11 locations.

Industry documents indicate that exploratory activities for the ice-covered periods of 1993 through 1997 are in the geographic area defined by a north/south line at Barrow and include all Alaska coastal areas, state waters and OCS waters east to the Canadian border. Industry estimates approximately 35 seismic programs (covering 7,400 to over 10,000 line miles), 7 geotechnical/geochemical programs, and 5 to 15 exploratory drilling operations over the next 5 years.

The petitions also include development and production activities of nine separate oil and gas fields in a region of 88,280 square miles. The nine fields are Prudhoe Bay, Juparuk, Endicott, Lisburne, Milne Point, Niakuk, Point McIntyre, West Sak, and Ugnu and are collectively known as the Production Area. The Production Area extends from Barrow on the west to the Canning River on the east and 25 miles inland from the coast. The Production Area is operated year-round. The

Prudhoe Bay Unit, discovered more than 20 years ago, is in decline and no major development activities are planned with the exception of a gas handling facility. New development is anticipated to be small and utilize existing facilities and infrastructure.

Similar activities to the activities discussed in the petitions, exploration, development and production are currently being conducted. Operations of this type have been ongoing since the discovery of the Prudhoe Bay oil field in 1968. Because of many variables influencing oil and gas industry activities, predictions as to the exact dates, duration and location are speculative. However, specific dates, duration and locations will be required when applications for LOAs are submitted.

To reduce duplication of time, effort and documentation and since the three petitions submitted by Industry are similar activities in one specific geographical area, the Service has made the determination that in accordance with section 101(a)(5) of the Act and 50 CFR 18.27, the three petitions will be combined into one rulemaking authorizing a specified activity within a specified geographical region.

Biological Information

The geographical area covered by the request is the land and water area east of a north/south line through Barrow, Alaska. The onshore area is 25 miles inland and east to the Canning River. The Arctic National Wildlife Refuge is outside of the proposed area. Offshore the area extends through Alaska State waters and into the OCS waters of the Beaufort Sea from Barrow east to the Canadian border.

Walrus

The Pacific walrus primarily occurs in the waters of the Bering and Chukchi Seas along the western coast of Alaska. Most of the population congregates near the ice edge of the Chukchi Sea pack ice during the summer. The primary summer range of the walrus does not extend east of Point Barrow. In the winter, walrus occur in areas where there are polynyas, open leads or thin ice in which they can create and maintain breathing holes. Major concentrations in the winter are located in the northwestern Bering Sea and the southeastern Bering Sea. Walrus do occur in the Beaufort Sea but only in small numbers.

Polar Bear

Polar bears occur only in the Northern Hemisphere, where their distribution is circumpolar, and they live in close

association with polar ice. In Alaska, their distribution extends from south of the Bering Strait to the U.S.-Canada border. The world population has been estimated at 10,000-20,000, with possibly as many as 5,000 bears in Alaska. The most extensive north-south movements of polar bears occur with the ice in the spring and fall.

Females without dependent cubs breed in the spring and enter maternity dens by late November. Females with cubs do not mate. An average of two cubs, sometimes one and rarely three, are usually born in December and the family group emerges in late March or early April. Only pregnant females den for an extended period during the winter. Other polar bears may burrow out depressions to escape harsh winter winds. The average reproduction interval for polar bear is 3-4 years. The maximum reported age of reproduction in Alaska is 18 years. Based on these conditions, a polar bear may produce about 10 cubs in her lifetime.

Ringed seals are the primary prey species of the polar bear. Occasionally bearded seals and walrus calves may be hunted. Polar bears have been known to eat nonfood items such as styrofoam, plastic, car-batteries, anti-freeze and lubricating fluids.

The fur and blubber of the polar bear provide vital protection from the cold air and frigid water. Newly emerged cubs of the year may not have a sufficient layer of blubber to maintain body heat when immersed in water for long periods of time. For this reason the mother is very protective of the cubs. It has been suggested that cubs abandoned prior to the normal weaning age of 2.5 years will likely not survive.

Polar bears have no natural predators, and they do not appear to be prone to death by diseases or parasites. The most significant source of mortality is man. Since 1972, with the passage of the Act, only Alaskan Natives have been allowed to hunt polar bears for their subsistence needs and for handicraft and clothing items. The Native harvest occurs without restrictions on sex, age, number or season, providing it is non-wasteful. From 1980-1991, the total annual harvest averaged 125 bears. The majority of this harvest (71 percent) came from the Chukchi Sea area.

Effects of Oil and Gas Industry Activities on Marine Mammals and on Subsistence Uses

Walrus

Oil and gas industry activities such as air and vessel traffic, noise from air traffic, seismic surveys, ice breakers, supply ships and drilling may frighten

or displace walrus. However, as previously stated in this document, the primary range of the Pacific walrus is west of Point Barrow and the likelihood of many walrus being in the Beaufort Sea is small. Therefore, it is unlikely that oil and gas industry activities will result in more than a negligible impact on the species. Likewise, activities during the ice covered periods and the onshore development and production activities should not impact the species.

In the early spring, females and calves may become concentrated in the limited amount of open water between the shorefast ice and the pack ice, or the shear zone. These areas of congregation or preferred habitat, result primarily because of the presence of open water. This congregation activity makes the walrus vulnerable to early arriving industry related traffic. Air and vessel traffic may cause the animals to stampede off the ice which may result in trampling and separation of cow-calf pairs.

Stationary drilling structures may affect the movement of walrus. Walrus may be attracted to the activity or repelled by noise or smell. In the 1989 drilling season an incident occurred in a Chukchi Sea operation where a young walrus surfaced in the center hole (moonpool) of the drillship. The walrus was removed from the drilling area by the use of a cargo net. The walrus left the scene of the incident and was not seen again.

Seismic surveys generally take place on solid ice or open water. Since most walrus activity occurs near the ice edge, interactions with walrus and the seismic activity are unlikely.

Subsistence

Compared to the overall harvest of walrus by Alaskan Natives, few are harvested in the Beaufort Sea along the northern coast of Alaska. The walrus constitutes a small portion of the harvest for the villages of Barrow and Nuiqsut. Annual harvest data of subsistence resources averaged for the period of 1962-1982 shows that the village of Barrow averaged 55 walrus per year. Nuiqsut averaged 3 walrus per year and Kaktovik shows no harvest. The majority of kills by the village of Barrow were primarily to the southeast in the Chukchi Sea. Therefore, oil and gas exploration, development and production activities should have a negligible impact on walrus subsistence activities.

Polar Bear

Oil and gas exploration, development and production activities in the Beaufort Sea and adjacent northern coast of

Alaska may affect the polar bear. Drillships and icebreaker activity may be physical obstructions to their normal movement. Noise, sights, and smells produced by activities may attract or repel bears. These disruptions may introduce changes in the bears natural behavior that may be detrimental.

Exploration activities during the open-water season are not likely to impact upon the movements or natural behavior of the polar bear. Although polar bears have been documented in open water, miles from the ice edge or ice floes, normally the polar bear is found near the ice edge. Therefore, it is unlikely that exploration activities in the open-water season will have more than a negligible impact on the polar bear.

Winter oil and gas activities have a far greater possibility of having a detrimental impact on the polar bear. Since the polar bear continues to move over the ice pack throughout the year, interactions with industry activities are likely. Curious polar bears are likely to investigate drillships and artificial or natural islands where drilling operations occur. Any on-ice activity creates an opportunity for industry/bear interactions.

Offshore drillsites within the pack ice may modify the habitat by creating open water leads down current from the activity. These open water leads may create temporary niches for subadult or non-breeding ringed seals, the primary prey species for the polar bear. Should this occur, polar bears would likely be attracted, thereby creating a possibility of industry/polar bear encounters. However, most offshore drilling operations are conducted from raised platforms which isolate the drilling operation and industry employees from the ice and polar bears.

Polar bear interaction plans are developed for each operation. Industry personnel are required to participate in a polar bear interaction training program while on-site. These training programs and interaction plans are designed to insure that the activity and possible interactions have the least detrimental effect on industry personnel and the polar bear. Occasionally, work may be required on the ice adjacent to elevated drillships or platforms. In such cases, work areas are well-lighted and open to reduce the likelihood that a polar bear would approach the work area undetected.

Winter seismic activity (survey crews) have a potential of disturbing denning females. Denning females are sensitive to noise disturbances and may be discouraged from seeking a preferred denning site, or may abandon dens,

thereby risking the lives of the offspring. Prior to initiating seismic survey activity, Industry provides the Service with its proposed survey route(s). Through satellite observations of radio collared bears the Service is able to inform Industry of known denning sites, and from knowledge of the geographical area the Service identifies areas of probable denning sites. Once sites are identified, Industry cooperates with the Service to alter survey routes to pass within no less than one mile of the denning sites. This on-going cooperative operating procedure ensures that known den sites are avoided within all practicable limits and every effort is made to keep a reasonable distance from known denning sites.

Subsistence

The polar bear is not a primary subsistence species of the villages of Barrow, Nuiqsut or Kaktovik. Preliminary data from the Service's Marking, Tagging and Reporting Program indicate that from July 1, 1989, to June 30, 1991, a total of 27 polar bears were killed by the Natives of Barrow. No polar bears were harvested by the Natives of the villages of Nuiqsut or Kaktovik. Hunting success varies considerably from year to year because of variable ice and weather conditions.

Industry works with the local Native groups to achieve a cooperative relationship between oil and gas activities and subsistence activities. It is assumed that oil and gas exploration, development and production will not have more than a negligible impact on subsistence activities.

Oil Spills

The accidental discharge of oil into the environment during industry activities could result from operational spills during refueling, handling of lubricants and liquid products, and during general maintenance. These spills are projected to be small in quantity, generally less than a barrel of oil per incident. Drilling units maintain onboard cleanup equipment and train personnel to handle operational spills. These spills are not expected to pose a threat to polar bear or walrus.

A blowout (i.e., the loss of control of a well during drilling) is a potentially more serious type of spill accident. However, based on data calculated by the Minerals Management Service, the probability of a major blowout in the Beaufort Sea is extremely low; data compiled by that agency verify that although blowouts have occurred in the course of exploratory drilling on the OCS, no oil has been spilled.

Based upon historical data, the probability of a blowout not occurring is calculated to be 99.36 percent. This data set includes all blowouts including those caused by gas or water, as well as oil. All blowouts do not necessarily result in the release of oil.

Polar bears may be directly impacted by a spill by swimming in oil-contaminated waters. Bears which have been fouled by oil may suffer thermoregulatory problems, ingest oil, and may exhibit other detrimental effects such as inflammation of the nasal passages or central nervous system.

The Service acknowledges that there is a low probability of oil spills connected with a blowout but the potential effects to polar bears or their habitats by oil spills may be significant. Bears that contact oil are likely to die. The probability of an oil spill must be balanced with the potential severity of harm to the species or stock when determining negligible impact. Even if the potential effects of a spill may be significant, if the probability of occurrence is low, a finding of negligible impact may be appropriate.

Due to the small number of walrus in the Beaufort Sea area, impacts to walrus resulting from oil spills are foreseen as negligible.

Conclusions

Based on the previous discussion, the Service makes the following preliminary findings regarding the proposed action.

Impact on Species

The Service finds, based on the best scientific information available, that the effects of oil and gas related exploration, development and production activities for the next 5 years in the Beaufort Sea and adjacent northern coast of Alaska will have a negligible impact on the polar bear and the Pacific walrus and their habitat and on the availability of the species for subsistence uses if certain conditions are met. Oil and gas activities have occurred in the Beaufort Sea and the northern coast of Alaska for many years. To date, there has been only one documented case of a lethal take of a polar bear at an exploratory drill site. Other incidents, including harassment as defined by the Act, may have occurred, but no reports or legal action have verified such an incident.

Liability for illegal discharges of toxic materials into the environment is described in the Clean Water Act and other statutes such as the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Resource Conservation and Recovery Act (RCRA). In the event of an oil spill or similar

unauthorized discharge of oil, petroleum products or other toxic materials into the environment, Industry will be liable for cleanup of the environment in accordance with applicable Federal, State, or local statutes. In the event of a catastrophic spill, the Service would reassess the impacts to the polar bear and/or walrus populations and reconsider the appropriateness of authorizations for taking through section 101(a)(5) of the Act.

The preliminary finding of "negligible impact" would apply to exploration, development and production activities related to oil and gas activities. The following are generic conditions that are proposed to eliminate interference with normal breeding, feeding and possible migration patterns to ensure that the effects to the species remain negligible. These conditions would be site specific and species specific and may be expanded in the LOAs.

(1) No intentional taking of polar bear or walrus would be authorized. Should a situation arise where an intentional take (e.g., harassment associated with deterrent activities and/or lethal take) is required for the protection of human life or welfare, the Service would allow such action under the authority of section 109(h)(1) of the Act.

(2) For the protection of pregnant polar bears during denning activities (selection, birthing and maturation) in known and confirmed denning areas, Industry would be restricted from activities in specific locations during certain specified times of the year. These restrictions would be applied on a case-by-case basis in response to a request for a LOA. In possible denning areas, pre-activity surveys, as determined by the Service, would be required to determine the presence or absence of denning activity.

(3) Each activity authorized by a LOA would require a site-specific plan of operation, a site-specific monitoring and reporting plan and where relevant, a plan of cooperation. The purpose of the required plans is to ensure that the level of activity and possible takes are consistent with the finding that the cumulative total of takes will have a negligible impact on polar bear and Pacific walrus, their habitat, and where relevant, on the availability of the species for subsistence uses.

Impact on Subsistence

Polar bear and Pacific walrus contribute a small amount of the total subsistence harvest for the villages of Barrow, Nuiqsut and Kaktovik. However, this does not mean that the harvesting of these species is not

important to Alaska Natives. To ensure that the impact of oil and gas activity on the availability of the species or stock for subsistence uses is negligible, prior to receipt of a LOA, Industry would be required to provide evidence to the Service that a plan of cooperation has been presented to the subsistence communities, the Eskimo Walrus Commission and the North Slope Borough. This plan of cooperation would provide the procedures on how Industry will work with the affected Native communities and what actions would be taken to avoid interference with subsistence hunting of polar bear and walrus. The Service would review the plan to ensure potential effects on the availability of the species are negligible.

If there is evidence that oil and gas activities will affect, or in the future may affect, the availability of polar bear or walrus for subsistence, the Service will reevaluate its findings regarding permissible limits of harassment and the measures required to ensure continued subsistence hunting opportunities.

Monitoring and Reporting

The purpose of monitoring programs is to determine short-term and long-term direct, indirect and cumulative effects of authorized oil and gas activities on polar bear and walrus in the Beaufort Sea and the northern coast of Alaska. Plans must identify the methods that will be used to determine and assess the effects on the movements, behavior and habitat use of polar bear and walrus in response to Industry activity. The results of the monitoring activity will be summarized and reviewed each year. Objectives for each year will be based on the previous year's monitoring results.

A Service approved plan for monitoring and reporting the effects of oil and gas industry exploration, development and production activities on polar bear and walrus would be required of all applicants prior to issuance of a LOA. For exploratory activities, a monitoring and reporting plan must be submitted each year, at least 90 days prior to initiation of proposed activities. Monitoring results would be submitted, in final form, to the Service 90 days after completion of the activity. Since development and production activities are continuous long-term activities, upon approval, LOAs and their required monitoring and reporting plans would be issued for the life of the activity or until expiration of the regulations, whichever occurs first. Monitoring results associated with LOAs for development and production activities would be submitted by

Industry annually for review by the Service. Continued operation under the LOA would be based upon annual approval of the monitoring results.

Required Determinations

The Service has prepared a draft Environmental Assessment in conjunction with this proposed rulemaking. At the time a final decision is made, the Service will decide whether this is a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969. A copy of the draft Environmental Assessment may be obtained from the individual identified above in the section entitled, **FOR FURTHER INFORMATION CONTACT**.

Through preparation of a Determination of Effects of Rule, the Department of the Interior (Department) has determined that this proposed rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. The proposed regulations are not likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or government agencies; or (3) significant adverse effects on competition, employment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. It has also been determined that this proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. Oil companies and their contractors, conducting exploration, development and production activities in Alaska, have been identified as the only likely applicants under the proposed regulations. These potential applicants have not been identified as small businesses. The determination of effects of this rule is available from the individual identified above in the section entitled, **FOR FURTHER INFORMATION CONTACT**.

This proposed rule is not expected to have a potential takings implication under Executive Order 12630 because it would authorize incidental, but not intentional, take of polar bear and walrus by oil and gas industry companies and thereby exempt them from civil and criminal liability. The proposed rule also does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

The Department has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

The collections of information contained in this rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) and assigned clearance number 1018-0070.

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Imports, Indians, Marine mammals, Transportation.

For the reasons set forth in the preamble, part 18, subchapter B of chapter 1, title 50 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 18—MARINE MAMMALS

1. The authority citation for 50 CFR part 18 continues to read as follows: 16 U.S.C. 1361 et seq.

2. Subpart J is proposed to be added as follows:

Subpart J—Taking Marine Mammals Incidental to Oil and Gas Exploration, Development and Production Activities in the Beaufort Sea and adjacent northern coast of Alaska.

- 18.121 Specified activity and specified geographical region.
- 18.122 Effective dates.
- 18.123 Permissible methods.
- 18.124 Prohibitions.
- 18.125 Level of activity.
- 18.126 Measures to ensure availability of species for subsistence.
- 18.127 Requirements for monitoring and reporting.
- 18.128 Letters of Authorization.

§ 18.129 Information collection requirements.

Subpart J—Taking of Marine Mammals Incidental to Oil and Gas Exploration, Development and Production Activities in the Beaufort Sea and adjacent northern coast of Alaska.

§ 18.121 Specified activity and specified geographical region.

Regulations in this subpart apply to the incidental, but not intentional, take of polar bear and walrus by U.S. citizens (as defined in § 18.27(c)) engaged in oil and gas exploration, development and production activities in the Beaufort Sea and adjacent northern coast of Alaska. The specified geographical area is defined by a North/South line at Barrow, Alaska, and includes all Alaska coastal areas, State waters, and Outer Continental Shelf waters east of that line

to the Canadian border and an area 25 miles inland from Barrow on the west to the Canning River on the east.

§ 18.122 Effective dates.

Regulations in this subpart are effective for a 5 year period beginning January 1, 1993, for year-round oil and gas exploration, development and production activities.

§ 18.123 Permissible methods.

(a) The incidental, but not intentional, take of polar bear and walrus by U.S. citizens holding a Letter of Authorization (see § 18.128) is permitted for takes resulting from:

- (1) conducting geological and geophysical surveys;
- (2) drilling exploratory wells and associated activities; and,
- (3) drilling production wells and performing production support operations.

(b) The methods and activities identified in § 18.123(a) must be conducted in a manner that minimizes to the greatest extent possible adverse impacts on polar bear and walrus, their habitat and on the availability of these marine mammals for subsistence uses.

(c) The Service will evaluate each request for a Letter of Authorization based on the specific activity and the specific geographical location. Each Letter of Authorization will identify allowable conditions or methods that are specified to the activity and location.

§ 18.124 Prohibitions.

(a) Intentional takes of polar bear or walrus are not authorized by these regulations.

Note: Pursuant to section 109(h)(1) of the Marine Mammal Protection Act, the Service may authorize the intentional take (e.g., harassment associated with deterrent activities and/or lethal take) for the protection of human life or welfare.

(b) Any take that fails to comply with the terms and conditions of these specific regulations or of the Letters of Authorization is prohibited.

§ 18.125 Level of activity.

When Letters of Authorization are requested, the Service will determine whether the level of activity identified in the request exceeds that considered by the Service in making a finding of negligible impact on the species and a finding of no unmitigable adverse impact on the availability of the species for subsistence. If the level of activity is greater, the Service will re-evaluate its findings to determine if those findings continue to be appropriate based on the greater level of activity. Depending on

the results of the evaluation, the Service may allow the authorization to stand as is, add further conditions, or withdraw or suspend the authorization.

§ 18.126 Measures to ensure availability of species for subsistence.

When applying for a Letter of Authorization, the applicant must submit a plan of cooperation that identifies what measures have been, and will be, taken to minimize adverse effects on the availability of polar bear and walrus for subsistence uses if the activity takes place in or near a traditional subsistence hunting area. The applicant must contact affected subsistence communities to discuss potential conflicts with the location, timing, and methods of proposed operations. The applicant must make reasonable efforts to assure that activities do not interfere with subsistence hunting or that adverse effects on the availability of polar bear or walrus are properly mitigated.

§ 18.127 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization are required to cooperate with the Service and other designated Federal, State or local agencies to monitor the impacts of oil and gas exploration, development and production activities on polar bear and walrus.

(b) Holders of Letters of Authorization must designate a qualified individual or individuals to observe and record the effects of the activities on polar bear and walrus.

(c) When applying for a Letter of Authorization, the applicant must include a site-specific plan to monitor the effects of the activity on the populations of polar bear and walrus that are present during the on-going activities. This plan, which must be approved by the Service's Alaska Regional Director, must identify the survey techniques that will be utilized to determine the actions of the polar bear and walrus in response to the on-going activity. The monitoring program must document the actions of these marine mammals and estimate the actual level of take. The monitoring requirements will vary depending on the activity, the location, and the time.

(d) If the activity is planned on ice or in an area of active ice movement, the operator must develop a polar bear awareness and interaction plan. For the protection of human life and welfare, each employee on site must complete a basic polar bear encounter training course.

(e) At its discretion, the Service may place an observer on site of the activity,

on board drillships, drill rigs, aircraft, icebreakers or other support vessels or vehicles to monitor the impact of the activity on polar bear and walrus.

(f) The holder of the Letter of Authorization must submit a report to the Service's Alaska Regional Director within 90 days after completion of activities. For ongoing development and production activities, the annual monitoring report must be submitted prior to January 15 for the previous year's activities. The report must include, at a minimum, the following information:

- (1) Dates and time of activity;
- (2) Dates and locations of polar bear or walrus activity related to monitoring the effects of the activity; and
- (3) Results of the monitoring activities including an estimate of the actual level of take.

§ 18.128 Letters of Authorization.

(a) Each person or entity conducting an oil and gas exploration, development, or production activity in the geographical area described in § 18.121, that may take a polar bear or walrus in execution of those activities, should apply for a Letter of Authorization for each exploration activity or a Letter of Authorization for each development and production area. The application for authorization must be submitted to the Service's Alaska Regional Director at least 90 days prior to the start of the proposed activity.

(b) When an application for a Letter of Authorization is submitted, it must include the following information:

- (1) A description of the activity, the dates and duration, the specific location and the estimated area affected by that activity;
- (2) A plan to monitor the behavior and effects of the activity on polar bear and walrus; and,
- (3) A cooperation plan which describes the measures to be taken to mitigate potential conflicts between the proposed activity and subsistence hunting.

(c) In accordance with § 18.27(f), decisions made concerning withdrawals of Letters of Authorization, either on an individual or class basis, will be made only after notice and opportunity for public comment.

(d) The requirement for notice and public comment in § 18.128(c) will not apply should the Service determine that an emergency exists which poses a significant risk to the well-being of the species or stock of polar bear or walrus.

§ 18.129 Information collection requirements.

The collections of information contained in this proposed rule have

been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned clearance number 1018-0070. It is necessary to collect the information in order to describe the proposed activity and estimate the cumulative impacts of potential takings by all persons conducting the activity. The information will be used to evaluate the application and determine whether to issue specific regulations and, subsequently, Letters of Authorization. Response is required to obtain a benefit.

The public burden associated with the 5 year period covered by this proposed rule is estimated at 5,802 hours including 1,002 hours to complete the three applications for specific regulations (334 hours each), 720 hours to complete 90 applications for Letters of Authorization (8 hours each), 2,880 hours to comply with recordkeeping requirements associated with 90 Letters of Authorization, and 1,200 hours to complete 150 required annual reports (8 hours each). Direct comments regarding the burden estimate or any other aspect of this requirement to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Department of the Interior, Mail Stop 224 ARLSQ, 1849 C Street, NW., Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project (1018-0070), Washington, DC 20503.

Dated: November 6, 1992.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 92-31696 Filed 12-29-92; 8:45 am]
BILLING CODE 4310-55-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 32

RIN 1018-AA71

Refuge-Specific Hunting and Fishing Regulations

AGENCY: Fish and wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would rescind the order of the Secretary of the Interior which closed certain inholdings to the hunting of migratory game birds within the external boundaries of the Sabine National Wildlife Refuge. The closed area includes a 3,120-acre inholding owned by the J.G. Gray Estate and 1,493.7 acres of other lands adjacent

to the J.G. Gray Estate. The area was initially closed on September 18, 1962, by agreement with the tenants because no migratory game bird hunting was then allowed on the Sabine National Wildlife Refuge. The refuge has now opened to hunting of migratory game birds and there is no longer any reason to have a hunting restriction on the private inholding at issue.

DATES: All comments regarding this proposed rulemaking must be received on or before January 29, 1993.

ADDRESSES: Address comments to: Assistant Director—Refugees and Wildlife, U.S. Fish and Wildlife Service, 1849 C Street, NW., MS 670 ARLSQ, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Duncan L. Brown, U.S. Fish and Wildlife Service, Division of Refuges, 1849 C Street, NW, MS 670 ARLSQ, Washington, DC 20240; Telephone (703) 358-2043.

SUPPLEMENTARY INFORMATION: The Sabine National Wildlife Refuge (NWR) was acquired in 1937. There were eight inholdings, three of which were owned by the Gray family. The Gray family entered into leases with the refuge for wildlife protection only. The agreements read in part " * * * and for the right to administer and protect the area as part of the Sabine National Wildlife Refuge * * * " The Gray family reserved the right " * * * to use these lands for grazing purposes; to construct roads; to construct and maintain any fences considered necessary; to improve the range in any manner desired; for the production of agricultural crops; the exclusive right to trap fur-bearing animals; and to prospect for, mine, produce and remove oil, gas, and minerals * * * " These agreements continued until 1962 at which time the lease expired. During the interim period between the execution of new lease agreements, the Secretary issued a Closure Order on the lands owned by the Gray family and other lands adjacent to such lands, upon appropriate notification and public comment, as he felt that waterfowl and other migratory species using the area needed to be protected from hunting—especially the Canada geese. Subsequently, new lease agreements were entered into in 1963 and the area has been used for grazing a small herd of cattle and several horses. No new lease agreements have been entered into since 1983 nor have any lease agreements been initiated by the heirs to the Gray estate. Currently, portions of Sabine NWR are open for waterfowl hunting, and Canada geese have increased to the point that an experimental Canada goose season has

been opened in this part of Louisiana since 1989.

The heirs of the Gray estate have requested that the U.S. Fish and Wildlife Service review and rescind the Secretarial Closure and allow waterfowl hunting on all these lands which would provide the heirs and landowners, respectively, with additional surface income from hunting leases. The heirs and landowners have indicated that some of the generated income would be used for habitat enhancement.

Accordingly, after consideration of all relevant facts, it is proposed that the Secretarial Order closing 3,120 acres of the J.G. Gray Estate lands and 1,493.7 acres of other adjacent lands, be rescinded and deleted from the areas closed to hunting found in 50 CFR 32.8, as proposed to be revised in another document published in the Federal Register on November 25, 1992.

Economic Effect

Executive Order 12291, "Federal Regulation," of February 17, 1981, requires the preparation of regulatory impact analyses for major rules. A major rule is one likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, government agencies or geographic regions; or significant adverse effects on the ability of United States-based enterprises to compete with foreign-based enterprises. The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) further requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. The rescinding of the Secretarial Closure on Sabine NWR (Gray Estate) will have little or no effect on the economy and would, therefore, generate less than \$100 million in revenues.

With respect to small entities, this proposed rule will have a positive aggregate economic effect on small businesses, organizations, and governmental jurisdictions. Aside from the immediate economic benefit to the heirs and landowners in their efforts to open their lands to hunting leases, the opening of the area will provide recreational opportunities and generate economic benefits to the local community, albeit small, through hunting related sales. Accordingly, the Department of the Interior has determined that this rule is not a "major rule" within the meaning of Executive Order 12291 and will not have a significant economic effect on a

substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Paperwork Reduction Act

The information collection requirements for part 32 are found in 50 CFR part 25 and have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1018-0014. The information is being collected to assist the Service in administering these programs in accordance with statutory authorities which require that recreational uses be compatible with the primary purposes for which the areas were established. The information requested in the application form is required to obtain a benefit.

The public reporting burden for the application form is estimated to average six (6) minutes per response, including time for reviewing instructions, gathering and maintaining data, and completing the form. Direct comments on the burden estimate or any other aspect of this form to the Service Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 224 ARLSQ, Washington, DC 20240; and the Office of Management and Budget, Paperwork Reduction Project (1018-0014), Washington, DC 20503.

Environmental Considerations

Pursuant to the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)), an environmental assessment has been prepared for this proposed opening of an inholding within refuge boundaries. Based upon the Environmental Assessments, the Service issued a Finding of No Significant Impact with respect to the opening. A Section 7 evaluation was also prepared pursuant to the Endangered Species Act. These documents are available for public inspection and copying in room 670, 4401 North Fairfax Drive, Arlington, Virginia, or by mail, at the address listed in the section ADDRESSES above.

Duncan L. Brown, Division of Refuges, U.S. Fish and Wildlife Service, Washington, DC, is the primary author of this proposed rulemaking document.

List of Subject in 50 CFR Part 32

Hunting and fishing, Reporting and recordkeeping requirements, Wildlife, Wildlife refuges.

Accordingly, it is proposed to amend part 32 of title 50 of the CFR as set forth below:

PART 32—[AMENDED]

1. The authority citation for part 32, as proposed to be revised at 57 FR 55686 on November 25, 1992, continues to read as follows:

Authority: 5 U.S.C. 301; 16 U.S.C. 460k, 664, 668dd, and 715i.

2. It is proposed that § 32.8, as proposed to be revised at 57 FR 55686 on November 25, 1992, be amended in the table by removing the entry dated "September 26, 1962", under the State of Louisiana.

Dated: November 27, 1992.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 92-31486 Filed 12-29-92; 8:45 am]

BILLING CODE 4310-55-M

Notices

Federal Register

Vol. 57, No. 251

Wednesday, December 30, 1992

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Housing Demonstration Program

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of Housing Demonstration Program.

SUMMARY: The Farmers Home Administration (FmHA) of the U.S. Department of Agriculture (USDA) will accept, in fiscal year 1993, proposals for a Housing Demonstration program under section 506(b) of title V of the Housing Act. Under section 506(b), FmHA may provide loans for innovative housing units and systems which do not meet existing published standards, rules, regulations, or policies. The intended effect is to increase the availability of affordable rural housing for low-income families, through innovative designs and systems.

FOR FURTHER INFORMATION CONTACT: Mathias J. Felber, Branch Chief, Special Programs Branch, Single Family Housing Processing Division, Farmers Home Administration, 14th and Independence Avenue, SW., room 5334, South Building, Washington, DC 20250, telephone 202-720-1474 or Raymond McCracken, Senior Loan Officer, Special Programs Branch, Single Family Housing Processing Division, Farmers Home Administration, 14th and Independence Avenue, SW., room 5334, South Building, Washington, DC 20250, telephone 202-720-1486.

SUPPLEMENTARY INFORMATION: Under current standards, regulations, and policies, some low-income rural families lack sufficient incomes to qualify for loans to obtain adequate housing. Section 506(b) of title V of the Housing Act of 1949 authorizes a housing demonstration program that could result in housing that these families can afford. The Congress of the United States made two conditions: (1)

That the health and safety of the population of the areas in which the demonstrations are carried out will not be adversely affected, and (2) that the aggregate expenditures for the demonstration may not exceed \$10 million in any fiscal year.

FmHA State Directors are authorized in fiscal year 1993 to continue to accept proposed demonstration concept proposals from nonprofit organizations, profit organizations and individuals as announced in 51 FR 19240 on May 28, 1986.

The State Directors will evaluate the proposals on a first-come, first-served basis. An acceptable proposal is to be sent to the National Office for concurrence of the Assistant Administrator, Housing before the State Director may approve it. If the proposal is not selected, the State Director will so notify the applicant, in writing, giving specific reasons why the proposal was not selected.

The funds for the Demonstration program are section 502 funds, and are available to housing applicants that may wish to purchase an approved Demonstration dwelling. However, there is no guarantee that a market exists for Demonstration dwellings and applicants for such a section 502 RH loan must be eligible for the program in all other respects.

This program activity is listed in the Catalog of Federal Domestic Assistance under No. 10.410. For the reasons set forth in Final Rule related to Notice 7 CFR 3015, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940-J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), this program/activity is excluded from the scope of Executive Order 12372 which requires the intergovernmental consultation with State and local officials.

All interested parties must make a written request for a proposal package. The request must be made to the State Director in the State in which the proposal will be submitted for evaluation. The Government will not reimburse or be liable for any expenses incurred by respondents in the development and submission of applications.

Following is a list of State Directors and the addresses:

Alabama State Office

State Director, Aronov Building, room 717, 474 South Court Street, Montgomery, Alabama 36104, Telephone: (205) 223-7077

Alaska State Office

State Director, 634 South Bailey, suite 103, Palmer, Alaska 99645, Telephone: (907) 745-2176

Arizona State Office

State Director, 201 East Indianola, suite 275, Phoenix, Arizona 85012, Telephone: (602) 640-5087

Arkansas State Office

State Director, 700 W. Capitol, P.O. Box 2778, Little Rock, Arkansas 72203, Telephone: (501) 324-6281

California State Office

State Director, 194 West Main Street, suite F, Woodland, California 95695-2915, Telephone: (916) 666-3382

Colorado State Office

State Director, 655 Parfet Street, room E 100, Lakewood, Colorado 80215, Telephone: (303) 236-2801

Delaware State Office

State Director, 4611 South Dupont Highway, P.O. Box 400, Camden, Delaware 19901, Telephone: (302) 697-4300

Florida State Office

State Director, 4440 N. West 25th Place, P.O. Box 147010, Gainesville, Florida 32614-7010, Telephone: (904) 338-3400

Georgia State Office

State Director, Stephens Federal Building, 355 E. Hancock Avenue, Athens, Georgia 30610, Telephone: (706) 546-2162

Hawaii State Office

State Director, Federal Building, room 311, 154 Wai'anuenue Avenue, Hilo, Hawaii 96720, Telephone: (808) 933-3000

Idaho State Office

State Director, 3232 Eldger Street, Boise, Idaho 83705, Telephone: (208) 334-1301

Illinois State Office

State Director, Illini Plaza, suite 103, 1817 South Neil Street, Champaign,

- Illinois 61820, Telephone: (217) 398-5235
- Indiana State Office**
State Director, 5975 Lakeside Boulevard, Indianapolis, Indiana 46278, Telephone: (317) 290-3100
- Iowa State Office**
State Director, 873 Federal Building, 210 Walnut Street, Des Moines, Iowa 50309, Telephone: (515) 284-4663
- Kansas State Office**
State Director, 1200 S.W. Executive Drive, P.O. Box 4653, Topeka, Kansas 66604, Telephone: (913) 271-2700
- Kentucky State Office**
State Director, 771 Corporate Drive, suite 200, Lexington, Kentucky 40503, Telephone: (606) 224-7300
- Louisiana State Office**
State Director, 3727 Government Street, Alexandria, Louisiana 71302, Telephone: (318) 473-7921
- Maine State Office**
State Director, 444 Stillwater Avenue, suite 2, P.O. Box 405, Bangor, Maine 04402, Telephone: (207) 990-9106
- Massachusetts State Office**
State Director, 451 West Street, Amherst, Massachusetts 01002, Telephone: (413) 253-4302
- Michigan State Office**
State Director, 1405 South Harrison Road, room 209, East Lansing, Michigan 48823, Telephone: (517) 337-6631
- Minnesota State Office**
State Director, 410 Farm Credit Service Building, 375 Jackson Street, St. Paul, Minnesota 55101, Telephone: (612) 290-3842
- Mississippi State Office**
State Director, Federal Building, suite 831, 100 W. Capitol Street, Jackson, Mississippi 39269, Telephone: (601) 965-4318
- Missouri State Office**
State Director, 601 Business Loop 70 West, Parkade Center, suite 235, Columbia, Missouri 65203, Telephone: (314) 876-0976
- Montana State Office**
State Director, 900 Technology Blvd., Unit 1, suite B, P.O. Box 850, Bozeman, Montana 59715, Telephone: (406) 585-2580
- Nebraska State Office**
State Director, Federal Building, room 308, 100 Centennial Mall N., Lincoln, Nebraska 68508, Telephone: (402) 437-5551
- New Jersey State Office**
State Director, Tarnsfield Plaza, suite 22, 1016 Woodlane Road, Mt. Holly, New Jersey 08060, Telephone: (609) 265-3600
- New Mexico State Office**
State Director, Federal Building, room 3414, 517 Gold Avenue, SW., Albuquerque, New Mexico 87102, Telephone: (505) 766-2462
- New York State Office**
State Director, James M. Hanley Federal Building, room 871, P.O. Box 7318, Syracuse, New York 13260, Telephone: (315) 423-5308
- North Carolina State Office**
State Director, 4405 Bland Road, suite 260, Raleigh, North Carolina 27609, Telephone: (919) 790-2731
- North Dakota State Office**
State Director, Federal Building, room 208, 220 East Roser, P.O. Box 1737, Bismarck, North Dakota 58502, Telephone: (701) 250-4781
- Ohio State Office**
State Director, Federal Building, room 507, 200 North High Street, Columbus, Ohio 43215, Telephone: (614) 469-5608
- Oklahoma State Office**
State Director, USDA Agricultural Center Building, Stillwater, Oklahoma 74074, Telephone: (405) 624-5608
- Oregon State Office**
State Director, Federal Building, room 1590, 1220 S. W. 3rd Avenue, Portland, Oregon 97204, Telephone: (503) 326-2731
- Pennsylvania State Office**
State Director, One Credit Union Place, suite 330, Harrisburg, Pennsylvania 17110, Telephone: (717) 782-4476
- Puerto Rico Office**
State Director, New San Juan Office Building, room 501, 159 Carlos E. Chardon Street, Hato Rey, Puerto Rico 00918-5481, Telephone: (809) 766-5628
- South Carolina State Office**
State Director, Strom Thurmond Federal Building, 1835 Assembly Street, room 1007, Columbia, South Carolina 29201, Telephone: (803) 765-5163
- South Dakota State Office**
State Director, Federal Building, room 308, 200 Fourth Street, SW., Huron, South Dakota 57350, Telephone: (605) 353-1430
- Tennessee State Office**
State Director, 3322 West End Avenue, suite 300, Nashville, Tennessee 37203, Telephone: (615) 736-7341
- Texas State Office**
State Director, Federal Building, suite 102, 101 South Main, Temple, Texas 76501, Telephone: (817) 774-1301
- Utah State Office**
State Director, Wallace F. Bennett Federal Bldg., 125 South State Street, room 5438, Salt Lake City, Utah 84138, Telephone: (801) 524-4063
- Vermont State Office**
State Director, City Center, 3rd Floor, 89 Main Street, Montpelier, Vermont 05602, Telephone: (802) 828-4454
- Virginia State Office**
State Director, Federal Building, room 8213, 400 North 8th Street, Richmond, Virginia 23240, Telephone: (804) 771-2638
- Washington State Office**
State Director, Federal Building, room 319, P.O. Box 2427, 301 Yakima Street, Wenatchee, Washington 98807, Telephone: (509) 662-4352
- West Virginia State Office**
State Director, P.O. Box 678, 75 High Street, Morgantown, West Virginia 26505, Telephone: (304) 291-4791
- Wisconsin State Office**
State Director, 4949 Kirschling Court, Stevens Point, Wisconsin 54481, Telephone: (715) 345-7600
- Wyoming State Office**
State Director, 100 East B, Federal Building, room 1005, P.O. Box 820, Casper, Wyoming 82602, Telephone: (307) 261-5271

Dated: December 15, 1992.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 92-31699 Filed 12-29-92; 8:45 am]

BILLING CODE 3410-07-M

Federal Grain Inspection Service**Request for Applications from Persons Interested in Designation to Provide Official Services in the Geographic Areas Presently Assigned to the Barton (KY) and North Dakota (ND) Agencies**

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations shall end not later than triennially and may be renewed. The designations of J. W. Barton Grain Inspection Service, Inc. (Barton), and North Dakota Grain Inspection Service, Inc. (North Dakota), will end June 30, 1993, according to the Act, and FGIS is asking persons interested in providing official services in the specified geographic areas to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before February 1, 1993.

ADDRESSES: Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. Telecopier (FAX) users may send their application to the automatic telecopier machine at 202-720-1015, attention: Homer E. Dunn. If an application is submitted by telecopier, FGIS reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202-720-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes FGIS' Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

FGIS designated Barton, headquartered in Owensboro, Kentucky, to provide official inspection and Class X or Class Y weighing services, and

North Dakota, headquartered in Fargo, North Dakota, to provide official grain inspection services under the Act on July 1, 1990.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designations of Barton and North Dakota end on June 30, 1993.

The geographic area presently assigned to Barton, in the States of Indiana, Kentucky, and Tennessee, pursuant to Section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

Clark, Crawford, Floyd, Harrison, Jackson, Jennings, Jefferson, Lawrence, Martin, Orange, Perry, Scott, Spencer, and Washington Counties, Indiana.

In Kentucky:

Bounded on the North by the northern Daviess, Hancock, Breckinridge, Meade, Hardin, Jefferson, Oldham, Trimble, and Carroll County lines;

Bounded on the East by the eastern Carroll, Henry, Franklin, Scott, Fayette, Jessamine, Woodford, Anderson, Nelson, Larue, Hart, Barren, and Allen County lines;

Bounded on the South by the southern Allen and Simpson County lines; and

Bounded on the West by the western Simpson and Warren County lines; the southern Butler and Muhlenberg County lines; the Muhlenberg County line west to the Western Kentucky Parkway; the Western Kentucky Parkway west to State Route 109; State Route 109 north to State Route 814; State Route 814 north to U.S. Route Alternate 41; U.S. Route Alternate 41 north to the Webster County line; the northern Webster County line; the western McLean and Daviess County lines.

In Tennessee:

Bounded on the North by the northern Tennessee State line from Sumner County east;

Bounded on the East by the eastern Tennessee State line southwest;

Bounded on the South by the southern Tennessee State line west to Interstate 65; and

Bounded on the West by Interstate 65 north to the northern Williamson County line; the northern Williamson County line east; the western Rutherford, Wilson, and Sumner County lines north.

The geographic area presently assigned to North Dakota, in the State of North Dakota, pursuant to Section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

Bounded on the North by the northern Steele County line from State Route 32 east; the eastern Steele County line south to State Route 200; State Route 200 east-southeast to the State line;

Bounded on the East by the eastern North Dakota State line;

Bounded on the South by the southern North Dakota State line west to State Route 1; and

Bounded on the West by State Route 1 north to Interstate 94; Interstate 94 east to the Soo Railroad line; the Soo Railroad line northwest to State Route 1; State Route 1 north to State Route 200; State Route 200 east to State Route 45; State Route 45 north to State Route 32; State Route 32 north.

Exceptions to North Dakota's assigned geographic area are the following locations inside North Dakota's area which have been and will continue to be serviced by the following official agency: Grain Inspection, Inc.; Norway Spur, and Oakes Grain, both in Oakes, Dickey County.

Interested persons, including Barton and North Dakota, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of Section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning July 1, 1993, and ending June 30, 1996. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

AUTHORITY: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 et seq.)

Dated: December 18, 1992

Neil E. Porter

Acting Director, Compliance Division

[FR Doc. 92-31368 Filed 12-29-92; 8:45 am]

BILLING CODE 3410-EN-F

Designation of the Farwell (TX) Agency

AGENCY: Federal Grain Inspection Service (FGIS).

ACTION: Notice.

SUMMARY: FGIS announces the designation of Farwell Grain Inspection, Inc. (Farwell), to provide official inspection services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: February 1, 1993.

ADDRESSES: Homer E. Dunn, Chief, Review Branch, Compliance Division,

FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-96454.

FOR FURTHER INFORMATION CONTACT:
Homer E. Dunn, telephone 202-720-8525.

SUPPLEMENTARY INFORMATION:

This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the August 3, 1992, *Federal Register* (57 FR 34109), FGIS announced that the designation of Farwell ends on January 31, 1993, and asked persons interested in providing official services within the specified geographic area to submit an application for designation. Applications were due by September 2, 1992.

Farwell, the only applicant, applied for designation in the entire area currently assigned to them. FGIS named and requested comments on the applicant in the September 30, 1992, *Federal Register* (57 FR 45032). Comments were due by October 30, 1992. FGIS received no comments by the deadline. FGIS evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act; and according to Section 7(f)(1)(B), determined that Farwell is able to provide official services in the geographic area for which they applied.

Effective February 1, 1993, and ending January 31, 1996, Farwell is designated to provide official inspection services in the geographic area specified in the August 3, 1992, *Federal Register*. Interested persons may obtain official services by contacting Farwell at 806-481-9052.

AUTHORITY: Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Dated: December 18, 1992

Neil E. Porter

Acting Director, Compliance Division

[FR Doc. 92-31367 Filed 12-29-92; 8:45 am]

BILLING CODE 3410-EN-F

Forest Service

Smith Fork Parcel Snowy Trail Re-route, Los Padres National Forest, Ventura County, CA; Intent To Prepare an Environmental Impact Statement

The Department of the Interior, Forest Service will prepare an environmental impact statement for a proposal to reduce off-highway vehicle (OHV) impacts to the riparian area of the 160-acre Smith Fork parcel within the

Mount Pinos Ranger District. The Los Padres National Forest Land and Resource Management Plan has been prepared. One of the management emphases in the Plan is to improve water quality, vegetative diversity, wildlife habitat capability, and to protect property and cultural resources.

The alternatives to be considered will range from "No Action" to re-routing portions of the Snowy OHV trail. The feasibility of trail relocation, construction of a stream crossing, as well as the physical, biological, economic, and social effects of project implementation will be analyzed within the context of the alternatives. Potential resource issues which may affect alternative development are the presence of sensitive herpetile species and cultural resources, visual quality, water quality, California Condor foraging habitat, maintaining biodiversity, and protecting the sensitive riparian ecosystem.

The California Department of Fish and Game and the U.S. Fish and Wildlife Service will be invited to participate as cooperating agencies to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the proposed re-route area. Federal, State, and local agencies, as well as industry; and other individuals or organizations who may be interested in or affected by the decision, will be invited to participate in the scoping process. This process will include:

1. Identification of potential issues and/or concerns.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a previous environmental review.

Scoping will be conducted during the winter of 1992/1993. The analysis is expected to take approximately 6 months to complete. The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review and comment by May 1993. EPA will publish a notice of availability for the draft EIS in the *Federal Register*. The comment period will be 45 days from the date of the EPA's published notice of availability. All persons interested in the proposed projects are urged to participate at that time. Comments on the draft EIS should be as specific as possible and may address the adequacy of the EIS or the merits of the alternatives considered. In addition, Federal court decisions have established that reviewers of a draft EIS must structure their participation in the environmental review so that it is

meaningful and alerts an agency to the reviewer's positions and contentions. Environmental objections that could have been raised at the draft EIS review stage may be waived if not raised until after completion of the final EIS. The reason for this is to ensure that substantive comments and objections are made available to the Forest Service in a timely manner so that the agency can respond to them in the final EIS.

The final EIS is scheduled to be completed by August 1993. In the final EIS, the Forest Service is required to respond to comments received from the public and consulted agencies. The responsible official will consider the comments, responses, laws, regulations, and policies in making a decision regarding these project proposals. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal.

David W. Dahl, Forest Supervisor, Los Padres National Forest, Goleta, CA, is the responsible official. Written comments, questions, and suggestions concerning the analysis should be sent to Mark Bethke, District Ranger, Mount Pinos Ranger District, Star Route, Box 400, Frazier Park, California 93225 (phone 805-245-3731).

Dated: December 15, 1992.

David W. Dahl

Forest Supervisor

[FR Doc. 92-31542 Filed 12-29-92; 8:45 am]

BILLING CODE 3410-11-M

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet in San Diego, California, January 29-30, 1993 8 a.m., to 4:30 p.m. On January 31, 1993, the meeting will be held from 8 a.m., to 12 noon. The Council is comprised of 15 members appointed by the Secretary of Agriculture. The purpose of the meeting is for the Council to begin development of the National Urban and Community Forestry Action Plan and to develop criteria for the urban and community forestry challenge cost-share program. The meeting will be Chaired by William Kruidenier, of the International Society of Arboriculture, and is open to the public. Time will be provided at the beginning of each major agenda topic for public input. Time to speak must be requested in advance from the committee staff. However, Council discussion is limited to Forest Service

staff and Council members. Persons who wish to bring urban and community forestry matters to the attention of the Council, may file written statements with the Council staff before or after the meeting.

DATES: The meeting will be held January 29-31, 1993.

ADDRESSES: The meeting will be held at Best Western Shelter Island Marina Inn, 2051 Shelter Island Drive, San Diego, California 92106-3194.

Send written statements or requests to appear to Brian McGuire, National Urban and Community Forestry Advisory Council, c/o Forest Service—Cooperative Forestry, USDA, P.O. Box 96090, Washington, DC 20090-6090, or phone (202) 205-1689.

FOR FURTHER INFORMATION CONTACT: Brian McGuire, Cooperative Forestry Staff, (202) 205-1689.

Dated: December 17, 1992.

Allan J. West,

Deputy Chief, State and Private Forestry.

[FR Doc. 92-31556 Filed 12-29-92; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Colorado Advisory Committee

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the Colorado Advisory Committee to the Commission will be held from 9 a.m. until 9 p.m. on Thursday, January 21, 1993, at the Memorial Student Lounge, College Union Building, Fort Lewis College, Durango, CO 81301. The purpose of this meeting is to conduct a briefing forum on the topic, "The Retention of Minorities in Colorado Institutions of Higher Education." Participants will include college and program administrators, faculty, and representatives from student and community organizations, and Native American tribes.

Persons desiring additional information should contact Committee Chairperson, Dr. Gwendolyn A. Thomas, or William F. Muldrow, Director of the Rocky Mountain Regional Division, (303) 866-1040 (TDD 303-866-1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 21, 1992.

Carol-Dee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92-31678 Filed 12-29-92; 8:45 am]

BILLING CODE 6335-01-M

Agenda and Notice of Public Meeting of the Michigan Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Michigan Advisory Committee to the Commission will be held from 9 a.m. until 5 p.m. on Friday, January 15, 1993 at the Omni International Hotel, 333 East Jefferson Avenue, Detroit, Michigan. The purpose of this meeting is to receive a briefing on interethnic and racial tensions in the Detroit area and to discuss other civil rights issues of interest to the Advisory Committee.

Persons desiring additional information should contact Dr. Janice G. Frazier, Committee Chairperson at (313) 259-8180 or Constance M. Davis, Regional Director of the Midwestern Regional Office, U.S. Commission on Civil Rights, at (312) 353-8311. Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, December 21, 1992.

Carol Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 92-31677 Filed 12-29-92; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket No. 921238-2338]

Annual Retail Trade Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: In accordance with title 13, United States Code, sections 182, 224, and 225, I have determined the Census Bureau needs the 1992 annual retail trade data to provide a sound statistical

basis for the formation of policy by various government agencies. These data also apply to a variety of public and business needs. This annual survey is a continuation of similar surveys that we have conducted each year since 1951 (except 1954). It provides, on a comparable classification basis, annual sales, purchases of merchandise and accounts receivable balances for 1992, and year end inventories for 1991 and 1992. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

FOR FURTHER INFORMATION CONTACT:

Ronald Pienykoski or Dorothy Engleking on (301) 763-5294.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take surveys necessary to furnish current data on the subjects covered by the major censuses authorized by title 13, United States Code. This survey will provide continuing and timely national statistical data on retail trade.

The 1992 Economic Census is being conducted currently. The data collected in this survey will be within the general scope and nature of those inquiries covered in the economic census.

The Census Bureau will require a selected sample of firms operating retail establishments in the United States (with sales size determining the probability of selection) to report in the 1992 Annual Retail Trade Survey. We will furnish report forms to the firms covered by this survey and will require their submissions within 30 days after receipt. The sample will provide, with measurable reliability, statistics on the subjects specified above.

This survey was cleared by the Office of Management and Budget in accordance with the Paperwork Reduction Act, Public Law 96-511, as amended, under OMB Control No. 0607-0013. We will provide copies of the form upon written request to the Director, Bureau of the Census, Washington, DC 20233.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: December 23, 1992.

Barbara Everitt Bryant,

Director, Bureau of the Census.

[FR Doc. 92-31625 Filed 12-29-92; 8:45 am]

BILLING CODE 3510-07-M

Economic Development Administration**ACTION:** To give firms an opportunity to comment.**Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance**

Petitions have been accepted for filing on the dates indicated from the firms listed below.

AGENCY: Economic Development Administration (EDA), Commerce.

Firm name	Address	Date petition accepted	Product
Micro Hybrid Dimensions, Inc	230 South Sleeta Lane, Tempe, AZ 85281-3027	11/16/92	Electronics—thick film hybrid circuits.
Frequency Electronics, Inc	55 Charles Lindbergh Boulevard Mitchel Field, NY 11553.	11/16/92	Electronics—oscillators, microwave semiconductors, time and frequency generating instruments.
Ruska Instrument Corp	3601 Dunvale Houston, TX 77063	11/23/92	Digital Pressure Gages and deadweight pressure gages.
Systems Division, Inc	2685 Dow Avenue, Unit C Tustin, CA 92680	11/23/92	Dust removal systems.
Reggio Fashions, Inc	12 East Coal Street Shenandoah, PA 17976	11/23/92	Ladies' dresses.
Idea Industries, Inc	400 Apgar Drive Somerset, NJ 08873	11/30/92	Thick film hybrid circuits for use in various applications using a baked on silk screening process.
Centerpoint Prepress Services, Inc	1219 Westlake Ave. N., Suite 302 Seattle, WA 981109.	11/30/92	Typesetting.
BBL Co	Detweiler & Pipe Roads, Box 310 Kulpville, PA 19443.	12/01/92	Metal products—carbon steel pipe and stainless and chromalloy pipe.
Kondex Corp	274 South Pleasant Hill Avenue Lomira, WI 53048-0937.	12/04/92	Metal products—sickles, conversion kits, knife backs and parts.
B & B Precision Tolls, Inc	310 West Main Street Avon, NY 14414	12/07/92	Rollers for paper copiers, shafts for electronic instrumentation and staple inserters for staplers.
D.C. Filter & Chemical, Inc	1517 Fifth Street Sandusky, OH 44870	12/07/92	Dust collection and air purification equipment, filters and laundry detergents.
Thermal Technologies, Inc	1256 N. Providence Road, suite 2 Media, PA 19063.	12/07/92	Materials for constructing banana ripening rooms.
Tymac Controls Corp	127 Main Street Franklin, NJ 07416	12/07/92	Computer boards, switches, monitors, data collection modules and other components for system.
Auto-Mat Co., Inc	225A Park Avenue Hicksville, NY 11801	12/07/92	Textile—carpet.
Ranick, Ltd	1750 Olympic Drive Athens, GA 30608	12/07/92	House slippers of textile material.
Bellesteel Industries, Inc	150 McClellan Highway, Box 490 East Boston, MA 02128.	12/08/92	Metal Products—steel and aluminum.
Capitol Circuits Corp	24 Denby Road Boston, MA 02134	12/08/92	Mach. & equip.—printer products and printer mechanisms.
Dickey—John Corp	15.5 South County Club Road Auburn, IL 62615	12/08/92	Grain analyzing equipment, equipment to monitor farm material and electronic control.
Rex-Cut Products, Inc	960 Airport Road Fall River, MA 02722	12/09/92	Machinery & equip.—abrasive grinding wheels and points.

The petitions were submitted pursuant to section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by the Trade Adjustment Assistance Division, room 7023, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of

business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: December 21, 1992.

Kathleen W. Lawrence,

Deputy Assistant Secretary for Program Operations.

[FR Doc. 92-31531 Filed 12-29-92; 8:45 am]

BILLING CODE 3510-24-M

International Trade Administration

[A-588-828]

Preliminary Determination of Sales at Less Than Fair Value: Dry Film, Photoresist From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 30, 1992.

FOR FURTHER INFORMATION CONTACT: Bill Crow, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0116.

Preliminary Determination

We preliminarily determine that dry film photoresist from Japan is being, or

is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margin is shown in the "Suspension of Liquidation" section of this notice. The statutory deadline for the final determination is 75 days from publication of this notice. However, we may expedite this determination.

Case History

Since the initiation of this investigation on August 5, 1992, (57 FR 36066, August 12, 1992), the following events have occurred.

On August 20, 1992, the Department sent a facsimile to the American Embassy in Tokyo, Japan, requesting information on the value and quantity of sales to the United States for the period December 1, 1991 to May 31, 1992 by Japanese companies.

On August 21, 1992 we received a response from the American Embassy in Tokyo. Based on the information provided to our Embassy via the Japanese Ministry of Trade and Industry (MITI), the Department selected Tokyo Ohka Kogyo (TOK) as the sole mandatory respondent in this investigation.

On August 31, 1992, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination. On September 8, 1992, Hitachi Chemical Co. Ltd., and Hitachi Chemical Co. America Ltd., sent a letter of appearance as interested parties in this proceeding. On September 10, 1992, TOK sent a letter of appearance as an interested party in this proceeding.

On September 18, 1992, the Department presented an antidumping duty questionnaire to TOK through our embassy in Tokyo. On October 1, 1992, TOK requested a two-week extension for its response to section A of the Department's questionnaire. On October 2, 1992, the Department granted a partial extension for responding to section A until October 13, 1992. On October 13, 1992, TOK submitted its response to section A. On October 16, 1992, TOK requested a two-week extension for its response to sections B and C of the Department's questionnaire. On October 16, 1992, The Department granted a full extension until November 2, 1992. On November 2, 1992, TOK submitted a letter in which it maintained that a response to sections B and C of the Department's questionnaire would be an "extraordinary administrative burden" and that TOK would "be unable to respond fully to section B and C." In this letter, TOK requested that the Department accept certain company

proprietary information to modify the margin estimation calculated in the petition.

On November 13, 1992, petitioners submitted a letter to the Department arguing that TOK's November 2, 1992, submission was a refusal to cooperate with the Department's investigation and that, absent reliable cost and price data, the Department had no option but to apply best information available (BIA) in calculating the estimated dumping margin for the preliminary determination. Petitioners argued that as an uncooperative respondent, BIA should be based on information provided in the petition.

Scope of Investigation

The products covered by this investigation are all forms of dry film photoresist (DFP) from Japan. Dry film photoresist includes all forms and dimensions of solid photosensitive resin film in rolls, without sprocket holes, designed to be laminated onto a surface to permit etching or plating of a pattern. The photoresist chemicals in dry form which comprise DFP currently are provided for under subheading 3707.90.30 of the Harmonized Tariff Schedule of the United States (HTSUS). Because of its film format, DFP may be entering the United States under HTSUS categories 3702.39.00.00, 3702.42.00.60, 3702.43.00.00, 3702.44.00.00, and 3702.95.00.00. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation is from January 1, 1992, through June 30, 1992.

Best Information Available

We have determined, in accordance with section 776(c) of the Act, that the use of BIA is appropriate for sales of subject merchandise in this investigation. In deciding whether to use BIA, section 776(c) provides that the Department may take into account whether the respondent was able to produce information requested in a timely manner and in the form required. In this case, TOK did not do so.

As outlined in the "Case History" section of this notice, the Department granted repeated requests by TOK for extensions in order for the company to gather and process the information requested in the Department's questionnaire. The November 2, 1992, letter from TOK was not a valid response to sections B and C of the questionnaire. TOK did not report its sales in its home market and the United

States. TOK's refusal to provide this data denies the department the information required to accurately calculate an antidumping duty margin. Consequently, we based our preliminary determination in this investigation on BIA. As BIA, we selected the highest margin calculated from information provided in the petition and in a supplement to the petition received on July 29, 1992. As noted in our notice of initiation, for purposes of the initiation, no adjustments were made to petitioners' calculations. However, the Department noted that if it became necessary at a later date to consider the petition as a source of BIA, we might review all of the basis for the petitioners' estimated dumping margins in determining BIA. The petitioners' methodology for calculating the estimated dumping margins was discussed in detail in our notice of initiation (57 FR 36066, August 12, 1992).

Using the data presented in the original petition and in the supplement provided by petitioners on July 29, 1992, we recalculated the estimated dumping margins as BIA. We compared the sale to U.S. customer A to the sale to Japanese customer B and the sale to U.S. customer B to the sale to Japanese customer A. In accordance with section 772(b) of the Act, we based U.S. price on purchase price, because the subject merchandise was sold to an unrelated purchaser in the United States prior to importation and because exporter's sales price (ESP) methodology, in this instance, was not otherwise indicated by the information submitted by petitioner. We deducted the first unrelated purchaser's estimated profit using the statutory eight percent, estimated material losses in further manufacture of the DFP, slitting costs, and movement charges, including U.S. duty. We did not deduct the U.S. selling expenses estimated by petitioner as these were undocumented and were estimated only for USP, not foreign market value (FMV).

To calculate FMV we deducted the estimated material losses in further manufacture of the DFP and slitting costs as reported in the petition. Pursuant to 19 CFR 353.56, we made circumstance of sale adjustments for U.S. warehousing and for imputed credit expenses. We increased FMV by the amount of warehousing expenses which had been subtracted from the U.S. price in the petition. We recalculated credit expenses to reflect the average period reported in the petition. We deducted home market packing costs and added U.S. packing costs, in accordance with section

773(a)(1) of the Act. The resulting margins ranged from 13.60 to 30.49 percent. Since respondent has been uncooperative in this investigation, we are applying the highest margin derived from the information presented in the petition, 30.49 percent, as BIA for TOK.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of dry film photoresist from Japan that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the *Federal Register*. The Customs Service shall require a cash deposit or posting of a bond equal to 30.49 percent on all entries of dry film photoresist from Japan. This suspension of liquidation will remain in effect until further notice. The estimated dumping margins are as follows:

Manufacturer/producer/exporter	Margin percentage
Tokyo Ohka Kogyo	30.49
All others	30.49

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than January 18, 1993, and rebuttal briefs, no later than January 25, 1993. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on January 29, 1993, at 9:30 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice.

Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: December 22, 1992.

Rolf Th. Lundberg, Jr.,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-31600 Filed 12-29-92; 8:45 am]

BILLING CODE 3510-09-M

[A-559-802]

Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Singapore; Amendment to Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of amendment to final results of antidumping duty administrative review.

SUMMARY: On September 14, 1992, the Department of Commerce (the Department) published in the *Federal Register* the final results of an administrative review of the antidumping duty order on industrial belts and components and parts thereof, whether cured or uncured, from Singapore (57 FR 41916). The review covered the period February 1, 1989 through May 31, 1990.

The Department has determined that it made a ministerial error in the final results. We have now corrected the error in question. This correction has no effect on the dumping margin.

EFFECTIVE DATE: December 30, 1992.

FOR FURTHER INFORMATION CONTACT: Millie Mack or Jean Kemp in the Office of Agreements Compliance; International Trade Administration; U.S. Department of Commerce; Washington, DC 20230; telephone number (202) 482-3793.

SUPPLEMENTARY INFORMATION: On September 14, 1992, the Department of Commerce (the Department) published in the *Federal Register* (57 FR 41916) the final results of an administrative review of the antidumping duty order on industrial belts and components and parts thereof, whether cured or uncured, from Singapore (54 FR 25315, June 14, 1989). The review covered shipments of this merchandise from Singapore to the United States during the period

February 1, 1989 through May 31, 1990 by Mitsuboshi Belting (Singapore) Pte., Ltd. (MBS).

On July 7, 1989, prior to our initiation of this review, respondent, MBS and its affiliate, MBL (USA) Corporation, filed a suit in the Court of International Trade (CIT) challenging the antidumping duty order. (*MBL (USA) Corporation and Mitsuboshi Belting (Singapore) PTE, Ltd v. United States*, 89-07-00404, Complaint dated July 7, 1989 (Complaint)). Respondent claimed the order was not in accordance with section 736(b)(2) of the Tariff Act of 1930, as amended, (the Act), because it did not require the release of any bond or refund of any cash deposit of antidumping duties for entries of industrial power V-belts from Singapore made between February 1 and June 7, 1989 (Complaint at 5). Before completion of this review, on March 5, 1992, the CIT held that, as a result of a negative International Trade Commission (ITC) "but for" vote (would not have found material injury, as opposed to the threat thereof, but for suspension of liquidation of entries) and because three of the six votes on injury were negative, cash deposits should not have been collected before the date of publication of the ITC's final affirmative determination in the *Federal Register*, which was June 7, 1989 (Investigation Nos. 731-TA-412 through 419 (Final Determination, 54 FR 24430, June 7, 1989)) (*MBL (USA) Corporation and Mitsuboshi Belting (Singapore) v. United States*, 787 F. Supp. 202 (CIT, March 5, 1992)). The CIT ordered the Department to "release or refund or cause to be released or refunded any bonds or deposits of estimated antidumping duties on imports of power-transmission belts from Singapore covered by this case entered between February 1 and June 7, 1989," in accordance with section 736(b)(2) of the Act. Therefore, pursuant to the CIT order, there were no longer any suspended entries to review from February 1 through June 6, 1989, and the period of review should have been June 7, 1989 through May 31, 1990.

When we published our final results of review on September 14, 1992, we inadvertently included the period between February 1 and June 7, 1989 in the review period for assessment. Subsequently, respondent filed suit claiming that the Department's failure to exclude the period in question was in contravention of the March 5, 1992 CIT decision. Consequently, we filed a motion for leave to correct this oversight and publish amended final results, pursuant to section 751(f) of the Act, (19 U.S.C. section 1675(f)), and 19 CFR

353.28(c) of the Department's regulations. On December 2, 1992, the CIT granted our motion.

Section 353.28(d) of the Department's regulations defines a "ministerial error" as "an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the Secretary considers ministerial" (19 CFR 353.28(d)). The respondent alleged in its suit that the period of review listed in the final results was incorrect. We agree and have corrected this unintentional error.

Amended Final Results of Review

As a result, of the correction, the period of review for the final results is June 7, 1989 through May 31, 1990. Because the final results of this review were based on best information available, the correction of this ministerial error has no effect on the dumping margin determined in the notice of final results, which was 31.73 percent.

This amendment to the final results of administrative review and notice are in accordance with section 751(f) of the Act (19 U.S.C. 1675(f)) and 19 CFR 353.28(c).

Dated: December 22, 1992.

Rolf Th. Lundberg,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-31601 Filed 12-29-92; 8:45 am]

BILLING CODE 3510-DS-M

[A-583-815]

Amended Final Determination and Antidumping Duty Order; Certain Welded Stainless Steel Pipe From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 30, 1992.

FOR FURTHER INFORMATION CONTACT: Raphael Hampton or William Crow, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; (202) 482-0176 or 482-0116, respectively.

SCOPE OF ORDER: In the publication of the Department of Commerce's (the Department's) final determination of sales at less than fair value of certain welded stainless steel pipe from Taiwan (57 FR 53706, November 12, 1992), the references to the Harmonized Tariff Schedule of the United States (HTSUS)

classifications were not stated correctly in the description of the scope of the investigation. The following is the complete scope of the merchandise subject to this antidumping duty order.

The merchandise subject to this antidumping duty order is welded austenitic stainless steel pipe (WSSP) that meets the standards and specifications set forth by the American Society for Testing and Materials (ASTM) for the welded form of chromium-nickel pipe designated ASTM A-312. The merchandise covered by the scope of the investigation also includes austenitic welded stainless steel pipes made according to the standards of other nations which are comparable to ASTM A-312.

WSSP is produced by forming stainless steel flat-rolled products into a tubular configuration and welding along the seam. WSSP is a commodity product generally used as a conduit to transmit liquids or gases. Major applications for WSSP include, but are not limited to, digester lines, blow lines, pharmaceutical lines, petrochemical stock lines, brewery process and transport lines, general food processing lines, automotive paint lines and paper process machines.

Imports of WSSP are currently classifiable under the following HTSUS subheadings: 7306.40.1000, 7306.40.5005, 7306.40.5015, 7306.40.5045, 7306.40.5060, and 7306.40.5075. Although these subheadings include both pipes and tubes, the scope of this investigation is limited to welded austenitic stainless steel pipes. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Amendment of Final Determination

In accordance with section 735(d) of the Tariff Act of 1930, as amended (the Act), on November 12, 1992, the Department published its final determination that certain welded stainless steel pipes from Taiwan were being sold at less than fair value (55 FR 53706).

On November 19, 1992, petitioners alleged that the Department had made three clerical errors in its final calculations. First, petitioners claimed that the Department had not added the amount of import duties levied on the gross price of certain home market sales to the gross price reported in the sales listing. Petitioners claim that since the gross home market price was the price before calculation and levying of the import duties, the duties should be added to the reported gross price.

Second, petitioners maintain that in calculating the general and administrative (G&A) expenses component of the cost of production (COP), the Department used the cost of manufacturing (COM) exclusive of import duties. Finally, petitioners maintain that in calculating the foreign unit price in dollars when using constructed value (CV), the Department subtracted home market indirect selling expenses twice instead of subtracting home market credit expenses.

We agree with petitioners that the calculation of G&A expenses for determining the COP used the incorrect COM variable. We also agree with petitioners that we should correct the formula for foreign market price in dollars to treat selling expenses correctly. We disagree with petitioners' contention that it is necessary to adjust the reported gross home market price for sales to end-users to reflect import duties on raw materials. Therefore, the Department's use of the reported gross home market price does not constitute a clerical error.

On November 24, 1992, Ta Chen Pipe Co., Ltd., (Ta Chen) alleged that the Department had made three clerical errors in its final determination. First, Ta Chen alleged that the Department did not correctly adjust for exchange rate gains. Ta Chen maintains that the Department did not make a downward adjustment which it requested for exchange rate gains from the purchase of coil used to make WSSP, although in the final determination, the Department agreed to make this adjustment. Ta Chen maintained that it had not included such an adjustment of direct material costs in its response to section D of the questionnaire. Petitioners contest this is a rebuttal submitted on December 2, 1992. They maintain that the data submitted by Ta Chen on June 24, 1992, includes the gain on exchange rates. Second, Ta Chen maintains that selling general and administrative expenses (SG&A) were overstated because the total COM used to calculate interest, selling, and G&A expenses incorrectly included the import duty expenses incurred in the home market. Ta Chen maintains that the ratios used were calculated by dividing expenses by the total COM exclusive of import duties. Therefore, it argues that the COM variable used in our equations should also be exclusive of import duties. Third, Ta Chen maintains that the Department incorrectly decreased the volume basis for allocating three exporters sales price (ESP) charges: marine insurance, U.S. duties and Taiwan export fees. Ta Chen maintains that the reported value figures for the

period of investigation (POI) were corrected at verification because those figures were for inventory entered into inventory of Ta Chen's subsidiary, TCI. It maintains, however, that the corresponding volume figures reported were unaffected by the correction, since the volume figures were derived from shipment from Taiwan to TCI.

We agree with Ta Chen concerning the treatment of exchange rate gains. We have corrected the COP and CV programming to decrease direct material costs in order to account for gains on exchange rates. We also agree with Ta Chen that G&A expenses for CV, interest for CV and COP, and selling expenses for COP should be calculated using ratios whose denominator, the cost of goods sold, is inclusive of import duties incurred in purchasing raw materials. Therefore, we have calculated the ratios by increasing the cost of goods sold by the total import duties reported to the Department in Ta Chen's response to section B of the questionnaire. We agree with Ta Chen that we incorrectly determined the per-unit expenses for ESP marine insurance, Taiwan export fees, and U.S. duties. The denominators for these allocated expenses had been modified incorrectly. Ta Chen had reported value and volume figures which served as possible allocation bases. The figures for the value of WSSP were corrected to eliminate non-Taiwan inventory discovered during preparation for verification. However, while the value figures reported were for inventory entered into TCI, the volume figures reported were for inventory shipped from Taiwan. Therefore, the volume figures never included the non-Taiwan merchandise. As such, reducing the volume basis for allocation was an incorrect adjustment.

Accordingly, pursuant to section 735(e) of the Act, we have corrected the ministerial errors in the final determination of sales at less than fair value. The cash deposit rate for Ta Chen is now 3.27 percent. The cash deposit rate for the "All Others" category is now 19.84 percent. The cash deposit rates for Jaung Yuann Enterprise Co., Ltd. and Yenn Chyang Industrial Co., Ltd. remain unaffected by this amendment to the final determination.

Antidumping Duty Order

In accordance with section 735(a) of the Act, on November 4, 1992, the Department of Commerce made its final determination that certain welded stainless steel pipes from Taiwan are being sold at less than fair value (57 FR 53705 November 12, 1992). On December 18, 1992, in accordance with section 735(d) of the Act, the U.S.

International Trade Commission notified the Department that such imports materially injure a U.S. industry.

Therefore, in accordance with section 736 of the Act, the Department will direct Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of certain welded stainless steel pipes from Taiwan. These antidumping duties will be assessed on all unliquidated entries of certain welded stainless steel pipes from Taiwan entered, or withdrawn from warehouse, for consumption on or after June 15, 1992, the date on which the Department published its preliminary determination notice in the *Federal Register* (57 FR 27735), except entries made by Chang Tieh Industry Co., Ltd. (Chang Tieh), which is excluded from the application of this order (see section, below, on Chang Tieh exclusion). On or after the date of publication of this notice in the *Federal Register*, Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise.

Manufacturer/producer/exporter	Margin percentage
Jaung Yuann Enterprise Co., Ltd.	31.90
Ta Chen Stainless Pipe Co., Ltd.	3.27
Yenn Chyang Industrial Co., Ltd.	31.90
All Others	19.84

In its final determination, the Department found that critical circumstances exist with respect to exports from Taiwan by Jaung Yuann Enterprise Co., Ltd. (JYE), and Yenn Chyang Industrial Co., Ltd. (YCI). However, on December 18, 1992, the ITC notified the Department that retroactive assessment of antidumping duties is not necessary to prevent recurrence of material injury from massive imports over a short period. As a result of the ITC's determination, pursuant to section 735(c)(3) of the Act, we shall order Customs to terminate the retroactive suspension of liquidation and to release any bond or other security and refund any cash deposit required under section 733(d)(2) with respect to JYE's and YCI's entries of subject merchandise entered, or withdrawn from warehouse, for consumption prior to June 15, 1992.

Exclusion of Chang Tieh Industry Co., Ltd.

In the final determination published on November 12, 1992 (57 FR 53706), the Department found that Chang Tieh had a zero dumping margin. For reasons discussed in the final determination, the Department required Chang Tieh, as a condition for exclusion from the application of the antidumping order, to certify that it: (1) Did not sell subject merchandise to the United States at less than its foreign market value during the POI; (2) does not intend to sell the subject merchandise to the United States at less than its foreign market value in the future; and (3) agrees to application of the order to its imports of subject merchandise, if the Department determines, at any time during the existence of the order, that CTI has sold or is likely to sell subject merchandise to the United States at less than its foreign market value. Chang Tieh provided the required certification and is, therefore, excluded from the application of the order (see Certification of Chang Tieh for further details).

This notice constitutes the antidumping duty order with respect to certain welded stainless steel pipes from Taiwan, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: December 22, 1992.

Rolf Th. Lundberg,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-31602 Filed 12-29-92; 8:45 am]
BILLING CODE 3510-DS-M

[A-580-810]

Antidumping Duty Order and Clarification of Final Determination: Certain Welded Stainless Steel Pipes From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 30, 1992.

FOR FURTHER INFORMATION CONTACT: John Gloninger, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230: (202) 482-2778.

Scope of Order

In the publication of the Department of Commerce's (the Department) final determination of sales at less than fair value of certain welded stainless steel pipes from Korea (57 FR 53693, November 12, 1992), the references to the Harmonized Tariff Schedule of the United States (HTSUS) classifications were not stated correctly in the description of the scope of the investigation. The following is the complete scope of the merchandise subject to this antidumping duty order. The merchandise subject to this antidumping duty order is welded austenitic stainless steel pipe (WSSP) that meets the standards and specifications set forth by the American Society for Testing and Materials (ASTM) for the welded form of chromium-nickel pipe designated ASTM A-312. The merchandise covered by the scope of the investigation also includes austenitic welded stainless steel pipes made according to the standards of other nations which are comparable to ASTM A-312.

WSSP is produced by forming stainless steel flat-rolled products into a tubular configuration and welding along the seam. WSSP is a commodity product generally used as a conduit to transmit liquids or gases. Major applications for WSSP include, but are not limited to, digester lines, blow lines, pharmaceutical lines, petrochemical stock lines, brewery process and transport lines, general food processing lines, automotive paint lines and paper process machines.

Imports of WSSP are currently classifiable under the following HTSUS subheadings: 7306.40.1000, 7306.40.5005, 7306.40.5015, 7306.40.5045, 7306.40.5060, and 7306.40.5075. Although these subheadings include both pipes and tubes, the scope of this investigation is limited to welded austenitic stainless steel pipes. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Antidumping Duty Order

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on November 4, 1992, the Department of Commerce (Department) made its final determination that certain welded stainless steel pipes from Korea are being sold at less than fair value (57 FR 53693 November 12, 1992). On December 18, 1992, in accordance with section 735(d) of the Act, the U.S. International Trade Commission

notified the Department that such imports materially injure a U.S. industry.

Therefore, in accordance with section 736 of the Act, the Department will direct Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of certain welded stainless steel pipes from Korea. These antidumping duties will be assessed on all unliquidated entries of certain welded stainless steel pipes from Korea entered, or withdrawn from warehouse, for consumption on or after June 15, 1992, the date on which the Department published its preliminary determination notice in the *Federal Register* (57 FR 27735). On or after the date of publication of this notice in the *Federal Register*, Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise.

Manufacturer/producer/exporter	Margin percentage
Sammi Metal Products Co., Ltd	7.75
Pusan Steel Pipe Co., Ltd	2.55
All others	6.23

This notice constitutes the antidumping duty order with respect to certain welded stainless steel pipes from Korea, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: December 22, 1992.

Rolf Th. Lundberg,

Acting Assistant Secretary for Import Administration.

[FR Doc. 92-31603 Filed 12-29-92; 8:45 am]
BILLING CODE 3510-DS-M

National Oceanic and Atmospheric Administration

South Atlantic Fishery Management Council; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold public hearings and provide a

comment period to solicit public input on proposed changes to its draft Shrimp Fishery Management Plan (FMP). The following are the proposed changes to the draft FMP:

Closures in the exclusive economic zone (EEZ) would apply only to waters adjacent to closed state waters. Any state could request a full or partial closure in adjacent EEZ waters, so long as it met the necessary criteria (i.e., a states must show greater than 80-percent reduction in its overwintering white shrimp population).

The Council proposes to not require Federal permits, nor set a control date for future limited entry management, at this time.

The Council proposes to establish a 25-nautical-mile buffer zone in the closed portion of the EEZ, inside of which trawling for any species of shrimp would be prohibited during a closure. Trawling for other marine fish or shellfish species inside this buffer zone would be permitted, but only with a net having a minimum 4-inch (10.2-cm) stretch mesh. Nets with mesh smaller than this would be prohibited on vessels trawling inside the buffer zone during a closure.

A review panel would be established to determine if states requesting EEZ closures met the closure criteria of an 80-percent reduction in white shrimp population following a severe winter freeze. This panel would consist of a Council staff member, an NMFS scientist, a Scientific and Statistical Committee member, and a shrimp biologist from each state in the South Atlantic region.

The definition of overfishing for white shrimp included in the FMP already has been taken to public hearings.

DATES: Written comments on the draft FMP must be received by January 15, 1993. The public hearings will be held from 7 p.m., local time, until 9 p.m., on January 4 and 5, 1993.

ADDRESSES: The hearings will be held on Monday, January 4, 1993, at South Carolina Wildlife & Marine Resources Department—Auditorium; 217 Ft. Johnson Road; James Island, SC 29422; telephone (803) 795-6350; and on Tuesday, January 5, 1993, at Holiday Inn—Oceanfront, 1617 N. First St., Jacksonville Beach, FL 32250; telephone (904) 249-9071. Written comments should be addressed to Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, One Southpark Circle, suite 306, Charleston, SC 29407-4699.

FOR FURTHER INFORMATION CONTACT: Carrie Knight, Public Information Officer, South Atlantic Fishery

Management Council, One South Park Circle, suite 306, Charleston, SC 29407-4699, telephone (803) 571-4366.

Dated: December 23, 1992.

Richard H. Schaefer,
Director of Office of Fisheries Conservation
and Management, National Marine Fisheries
Service.

[FR Doc. 92-31656 Filed 12-24-92; 9:31 am]

BILLING CODE 3510-22-M

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of permit modifications.

SUMMARY: Notice is hereby given that, pursuant to the provisions of the Regulations Governing the Taking and Importing of Marine Mammals, Public Display Permit No. 627 issued to Marine Life Aquarium, Keystone Route Box 365, Rapid City, SD 57701; Public Display Permit No. 647 issued to Gulf World, Inc., 15412 98-A, Panama City Beach, FL 32413; Public Display Permit No. 632 issued to Marine World Africa USA, Marine World Parkway, Vallejo, CA 94589; Public Display Permit No. 656 issued to the National Aquarium in Baltimore, 501 E. Pratt Street, Pier 3, Baltimore, MD 21202; Public Display Permit No. 558 issued to Loro Parque, S.A., Puerto De La Cruz, Tenerife, Spain; Public Display Permit No. 626 issued to the New England Aquarium, Central Wharf, Boston, MA 02110; Public Display Permit No. 608 issued to the Aquarium of Niagara Falls, 701 Whirlpool Street, Niagara Falls, NY 14301; and Public Display Permit No. 649 issued to Marine Animal Productions, Inc., P.O. Box 4078, Gulfport, MS 39502, are modified to extend the authority to take Atlantic bottlenose dolphins (*Tursiops truncatus*) for public display purposes until December 31, 1993. All conditions of the original permits and subsequent modifications shall remain in effect.

EFFECTIVE DATE: These modifications are effective from December 30, 1992.

ADDRESSES: The permits, as modified, are available for review, by appointment, in the Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, room 7324, Silver Spring, MD 20910, (301) 713-2289.

FOR FURTHER INFORMATION CONTACT: Ann Terbush, (301) 713-2289.

SUPPLEMENTARY INFORMATION: NMFS intends to issue regulations establishing a procedure for setting and revising quotas to govern the removal of Atlantic

bottlenose dolphins from the waters of the Gulf of Mexico and Florida east coast (55 FR 22042, May 31, 1990). NMFS established an interim policy, effective February 1990 (55 FR 22054, May 31, 1990), on the taking of Atlantic bottlenose dolphins from the waters of the Gulf of Mexico and Florida east coast under scientific research and public display permits issued pursuant to 50 CFR part 216. A voluntary moratorium has been in effect on the removal of bottlenose dolphins from the Gulf of Mexico collection areas since February 1990. During the voluntary moratorium, public display permit holders authorized to capture Atlantic bottlenose dolphins have deferred collections. NMFS states that it would consider requests to collect if it was reasonably necessary to maintain a facility's public display exhibit. Permit holders have requested, and NMFS has granted extensions through 1993 to the above permits authorizing collection of dolphins.

The interim policy will be in effect until revised, or superseded by the promulgation of final regulations regarding the setting and revision of quotas. Those regulations will be based on a comprehensive review of the status of stocks, the live capture and incidental take of bottlenose dolphins in the southeast region, and the current procedure, which allows an annual take of 2 percent of the minimum population level from each quota area.

NMFS must be notified in advance of any collections to determine if such collections can be authorized for a given area.

Dated: December 23, 1992.

Nancy Foster,

Acting Deputy Assistant Administrator for
Fisheries, National Marine Fisheries Service.

[FR Doc. 92-31689 Filed 12-29-92; 8:45 am]

BILLING CODE 3510-22-M

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will hold meetings of its Scallop & Lobster Committee (SLC) and its Large Pelagic/Shark Committee (LPSC) on January 19, 1993, at the Dunes Manor Hotel, 28th Street & The Ocean, Ocean City, MD; telephone: (410) 289-1100. The SLC will meet from 10:30 a.m. until 12 p.m., and the LPSC will meet from 1 p.m. until 4:30 p.m. Also on January 19 at 7 p.m. there will be a hearing on the Resubmitted Portion of Amendment #2 the Summer Flounder

Plan. There will be a Demersal Species Committee meeting on January 20 at 3 p.m.

On January 20 the Council will begin its regular meeting at 8:30 a.m. and is scheduled to adjourn at approximately 3 p.m. On January 21 the Council will meet at 8 a.m. and is scheduled to adjourn at approximately 12 noon. Following Council adjournment, there will be an Information & Education Committee meeting.

In addition to hearing committee reports at this meeting, the Council may adopt the Scoping Document for Amendment #5 to the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan, may adopt the resubmitted portion of Amendment #2 to the Summer Flounder Plan, may adopt a scoping document and control date for a Tilefish Fishery Management Plan, and may consider other fishery management matters as deemed necessary. The meeting may be lengthened or shortened based on the progress of the agenda. The Council may go into closed session (not open to the public) to discuss personnel and/or other national security matters.

For more information, contact John Bryson, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674-2331.

Dated: December 24, 1992.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and
Management, National Marine Fisheries
Service.

[FR Doc. 92-31757 Filed 12-29-92; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council (Council) and its Scientific and Statistical Committee (SSC) and Advisory Panel (AP) will meet during the week of January 17, 1993, at the Hilton Hotel, Anchorage, AK.

The Council is scheduled to convene its regular public meeting on January 18 at 8 a.m., and continue that meeting through January 21. A Council executive session that is not open to the public and that pertains to reports on litigation, international affairs and personnel matters is scheduled to begin at noon on January 20. Other workgroup and committee meetings also may be scheduled on short notice throughout the meeting week.

The Council's SSC, AP, and Comprehensive Planning Committee will begin their meetings on January 17 at 8 a.m. at the same location. Their agenda items will be similar to that of the Council (see below).

The Council will consider the following agenda items: (1) Reports by the National Marine Fisheries Service, the Alaska Department of Fish and Game, and the United States Coast Guard; (2) report on scallop management, framework plan and moratorium; (3) a legislative update and Magnuson Act issues; (4) report from the Comprehensive Planning Committee on progress in developing alternatives for analysis. The Council may select alternatives for further analysis; (5) review of analyses for block proposals and a 1,000 lb. minimum for the Sablefish and Halibut Individual Fishing Quota Plan; (6) initial review of a possible plan amendment to increase the optimum yield for *C. Opilio crab*. Discussion of pot limits; (7) final review and approval of groundfish plan amendments, including a proposed Pribilof Island trawl closure and an amendment to separate Atka mackerel from the "Other Species" category in the Gulf of Alaska Groundfish Fishery Management Plan; (8) initial review of groundfish plan amendments for salmon bycatch rates and a subdivision of the Aleutian region in the Bering Sea/ Aleutian Island Groundfish Fishery Management Plan; (9) final review of a groundfish regulatory amendment to add the definition of legal gears in the groundfish plans; (10) review and comment on proposed rules for fair-start provisions for the hook and line longline sablefish fishery in the Gulf of Alaska, delay of the second quarter pollock season in the Gulf of Alaska, and the 1993 recordkeeping/reporting requirements; (11) request for experimental fishing permit to allow retention of prohibited species catch for distribution to charitable organizations; (12) review current staff tasking; (13) review Gulf of Alaska rockfish rebuilding plans; and (14) receive Committee and staff reports on:

1. Bycatch management planning,
2. Total weight measurement,
3. Interactive communications,
4. Progress on analysis of trawl mesh regulations,
5. Possible analysis of cod allocations by gear and season, and
6. Possible analysis of an amendment to open all gear season simultaneously.

For more information contact the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, (907) 271-2809.

Dated: December 24, 1992.

Richard H. Schaefer,
Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-31758 Filed 12-29-92; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Salmon Technical Team (Team) will hold a public meeting on January 19-22, 1993, at the Council's office (address below).

The meeting, which is primarily a work session of the Team, will begin on January 19 at 10 a.m. to draft the "Review of 1992 Ocean Salmon Fisheries" and begin the assessment of impacts of ocean fisheries on salmon stocks listed under the Endangered Species Act.

Public comment pertaining to assessment of the 1992 ocean salmon fisheries may be provided at appropriate times as determined by the Team Chairman.

For more information contact John Coon, Staff Officer (Salmon), Pacific Fishery Management Council, Suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: December 24, 1992.

Richard H. Schaefer,
Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-31759 Filed 12-29-92; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Individual Quota Industry Committee will hold a public meeting on January 19-21, 1993, in room 440, at the Metro Center, 2000 SW First Avenue, Portland, OR. The meeting will begin at 10 a.m. on January 19, and adjourn at approximately 4:30 p.m. on January 21.

The purpose of this meeting is to continue to identify options for an individual transferable quota program for the West Coast halibut and non-trawl sablefish fisheries. Where multiple options are developed, the Committee will identify arguments of support and opposition for each option.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: December 24, 1992.

Richard H. Schaefer,
Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-31760 Filed 12-29-92; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council will hold an Ad Hoc Committee (AHC) meeting on January 22, 1993, at the Pacific Fishery Management Council, at the Metro Center, 2000 SW. First Avenue, room 440, Portland, Oregon. The meeting will begin at 8 a.m.

The AHC will review concerns and criticisms regarding alleged conflicts of interest and may make recommendations to the Council for changing Council operating procedures.

For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Dated: December 24, 1992.

Richard H. Schaefer,
Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 92-31761 Filed 12-29-92; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits and Staged Entry for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

December 23, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year and establishing staged entry.

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6703. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 2, 1988, as amended, between the Governments of the United States and the People's Republic of China establishes limits for the 1993 agreement year. The limits for Categories 218, 239, 314, 334, 335, 338/339, 338-S/339-S, 340, 341, 347/348, 351, 352, 359-C, 359-V, 435, 614, 615, 617, 635 and 835 are being reduced for carryforward used in 1992. The limits for Categories 314 and 617 are subject to phased entry procedures.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 57 FR 54976, published on November 23, 1992).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantiello,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements
December 23, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1991; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable

Fiber Textile Agreement of February 2, 1988, as amended, between the Governments of the United States and the People's Republic of China; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in China and exported during the twelve-month period beginning on January 1, 1993 and extending through December 31, 1993, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels not in a group	
200	618,088 kilograms.
218	10,251,044 square meters.
219	2,146,517 square meters.
226	9,746,751 square meters.
237	1,680,392 dozen.
239	2,578,138 kilograms.
300/301	3,592,387 kilograms.
313	39,772,262 square meters.
314	43,935,222 square meters.
315	155,204,414 square meters.
317/326	18,610,046 square meters of which not more than 3,560,468 square meters shall be in Category 326.
331	4,719,281 dozen pairs.
333	85,511 dozen.
334	287,945 dozen.
335	360,463 dozen.
336	150,706 dozen.
338/339	2,278,844 dozen of which not more than 1,729,891 dozen shall be in knit shirts other than T-shirts and tank tops in Categories 338-S/339-S ¹ .
340	780,865 dozen of which not more than 402,228 dozen shall be in shirts made from fabric with two or more colors in the warp and/or the filling, excluding napped shirts in Category 340-Z ² .
341	624,153 dozen of which not more than 385,749 dozen shall be in blouses made from fabric with two or more colors in the warp and/or the filling in Category 341-Y ³ .
342	251,173 dozen.
345	127,749 dozen.
347/348	2,325,301 dozen.
350	145,496 dozen.
351	458,732 dozen.
352	1,732,092 dozen.
359-C ⁴	512,443 kilograms.
359-V ⁵	775,891 kilograms.
360	6,764,306 numbers of which not more than 4,613,910 numbers shall be in Category 360-P ⁶ .
361	3,819,599 numbers.
363	29,098,315 numbers.
369-D ⁷	4,306,902 kilograms.
369-H ⁸	4,404,808 kilograms.
369-L ⁹	2,894,558 kilograms.
369-S ¹⁰	607,725 kilograms.

Category	Twelve-month restraint limit
410	1,920,130 square meters of which not more than 1,539,191 square meters shall be Category 410-A ¹¹ and not more than 1,539,191 square meters shall be in Category 410-B ¹² .
433	22,596 dozen.
434	12,875 dozen.
435	22,946 dozen.
436	14,714 dozen.
438	25,749 dozen.
440	36,786 dozen of which not more than 21,020 dozen shall be in men's shirts in Category 440-M ¹³ .
442	40,990 dozen.
443	132,427 numbers.
444	196,874 numbers.
445/446	283,772 dozen.
447	76,530 dozen.
448	21,513 dozen.
607	2,892,108 kilograms.
611	4,943,434 square meters.
613	6,765,106 square meters.
614	10,351,755 square meters.
615	21,914,861 square meters.
617	15,057,099 square meters.
631	1,127,344 dozen pairs.
633	51,419 dozen.
634	559,400 dozen.
635	567,404 dozen.
636	515,393 dozen.
638/639	2,318,570 dozen.
640	1,423,598 dozen.
641	1,281,136 dozen.
642	294,167 dozen.
645/646	816,877 dozen.
647	1,479,777 dozen.
648	1,057,291 dozen.
649	826,108 dozen.
650	103,859 dozen.
651	707,831 dozen of which not more than 124,619 dozen shall be in Category 651-B ¹⁴ .
652	2,368,823 dozen.
659-C ¹⁵	374,733 kilograms.
659-H ¹⁶	2,566,655 kilograms.
659-S ¹⁷	552,329 kilograms.
669-P ¹⁸	1,802,816 kilograms.
670-L ¹⁹	14,348,476 kilograms.
831	464,512 dozen pairs.
833	24,585 dozen.
835	112,792 dozen.
840	451,786 dozen.
842	245,851 dozen.
845	2,410,931 dozen.
846	162,299 dozen.
847	1,198,524 dozen.
863-S ²⁰	8,448,292 numbers.
Group II	
330, 332, 349, 353, 354, 359-O ²¹ , 431, 432, 439, 459, 630, 632, 643, 644, 653, 654 and 659-O ²² , as a group.	125,144,279 square meters equivalent.
Sublevel in Group II	
643	470,948 numbers.
Group III	
201, 220, 222-225, 227, 229, 362, 369-O ²³ , 400, 414, 464-469, 600, 603, 604-O ²⁴ , 606, 618-622, 624-629, 665, 666, 669-O ²⁵ and 670-O ²⁶ , as a group.	337,572,880 square meters equivalent.

Category	Twelve-month restraint limit
Group IV	
832, 834, 836, 838, 839, 843, 844, 850-852, 858 and 859, as a group.	26,854,249 square meters equivalent.
Sublevel in Group IV	
836	251,304 dozen.

¹ Categories 338-9/339-S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018, 6109.10.0023, 6109.10.0040, 6109.10.0045, 6109.10.0080 and 6109.10.0085.

² Category 340-Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

³ Category 341-Y: only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

⁴ Category 359-C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

⁵ Category 359-V: only HTS numbers 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0045, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070.

⁶ Category 360-P: only HTS numbers 6302.21.1010, 6302.21.1020, 6302.21.2010, 6302.21.2020, 6302.31.1010, 6302.31.1020, 6302.31.2010 and 6302.31.2020.

⁷ Category 369-D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

⁸ Category 369-H: only HTS numbers 4202.22.4020, 4202.22.4500 and 4202.22.8030.

⁹ Category 369-L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6000.

¹⁰ Category 369-S: only HTS number 6307.10.2005.

¹¹ Category 410-A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

¹² Category 410-B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

¹³ Category 440-M: only HTS numbers 6203.21.0030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.2020, 6295.90.4020 and 6211.31.0030.

¹⁴ Category 651-B: only HTS numbers 6107.22.0015 and 6108.32.0015.

¹⁵ Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

¹⁶ Category 659-H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

¹⁷ Category 659-S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

¹⁸ Category 669-P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

¹⁹ Category 670-L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9020.

²⁰ Category 863-S: only HTS number 6307.10.2015.

²¹ Category 359-O: all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359-C); 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0045, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070 (Category 359-V).

²² Category 659-O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659-C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659-H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659-S).

²³ Category 369-O: all HTS numbers except 6302.60.0010, 6302.91.0005, 6302.91.0045 (Category 369-D); 4202.22.4020, 4202.22.4500, 4202.22.8030 (Category 369-H); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015, 4202.92.6000 (Category 369-L); and 6307.10.2005 (Category 369-S).

²⁴ Category 604-O: all HTS numbers except 5509.32.0000 (Category 604-A).

²⁵ Category 669-O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669-P).

²⁶ Category 670-O: only HTS numbers 4202.22.4030, 4202.22.8050 and 4202.32.9550.

Imports charged to these category limits for the period January 1, 1992 through December 31, 1992 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and the People's Republic of China.

Merchandise exported during the twelve-month period beginning on January 1, 1992 and extending through December 31, 1992 in Categories 314 and 617, shall be permitted entry into the United States for consumption, or withdrawn from warehouse for consumption, in each of the following one-month periods during 1993 in the amounts listed below:

Category and period	Amount to be entered
314	
January 1-31	14,645,074 square meters.
February 1-28	14,645,074 square meters.
March 1-31	14,645,074 square meters.
617	
January 1-31	5,019,033 square meters.
February 1-28	5,019,033 square meters.
March 1-31	5,019,033 square meters.

Merchandise entered in 1993 in Categories 314 and 617, which are exported during the twelve-month period beginning on January 1, 1992 and extending through December 31, 1992, plus goods exported during the twelve-month period beginning on January 1, 1993 and extending through December 31, 1993, together shall not exceed the 1993 limits established for such goods in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption

to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-31606 Filed 12-29-92; 8:45 am]

BILLING CODE 3510-DR-F

Announcement of an Import Restraint Limit and Guaranteed Access Level for Certain Cotton Textile Products Produced or Manufactured in Guatemala

December 23, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing an import limit and guaranteed access level for the new agreement year.

EFFECTIVE DATE: January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-5850. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated December 14, 1992, the Governments of the United States and Guatemala agreed to extend their MOU dated November 9, 1989 to establish limits and guaranteed access levels for cotton textile products in Categories 347/348 for two consecutive one-year periods beginning on January 1, 1993 and extending through December 31, 1994.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limit and guaranteed access level for Categories 347/348 for the period January 1, 1993 through December 31, 1993.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION: Textile and Apparel**

Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 59334, published on December 15, 1992.

Requirements for participation in the Special Access Program are available in Federal Register notice 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989; and 55 FR 3079, published on January 30, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOUs, but are designed to assist only in the implementation of certain of their provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 23, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 9, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Guatemala and exported during the twelve-month period beginning on January 1, 1993 and extending through December 31, 1993.

Effective on January 1, 1993, pursuant to Memoranda of Understanding (MOUs) dated November 9, 1989 and December 14, 1992 between the Governments of the United States and Guatemala, you are directed to amend the directive dated December 9, 1992, to include a limit for cotton textile products in Categories 347/348 at a level of 1,113,000 dozen.

Imports charged to the category limit for Categories 347/348 for the period January 1, 1992 through December 31, 1992 shall be charged against that level of restraint to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such goods shall be subject to the level set forth in this directive.

The limit set forth above is subject to adjustment in the future pursuant to the provisions of the MOUs dated November 9, 1989 and December 14, 1992 between the Governments of the United States and Guatemala.

Additionally, pursuant to the MOUs dated November 9, 1989 and December 14, 1992; and the terms of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), effective on January 1, 1993, a guaranteed access level of 1,000,000

dozen is being established for properly certified textile products assembled in Guatemala from fabric formed and cut in the United States in Categories 347/348 which are re-exported to the United States from Guatemala during the period January 1, 1993 through December 31, 1993.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of January 24, 1990 shall be denied entry unless the Government of Guatemala authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-31607 Filed 12-29-92; 8:45 am]

BILLING CODE 3510-DR-F

Amendment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

December 23, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending limits.

EFFECTIVE DATE: January 5, 1993.

FOR FURTHER INFORMATION CONTACT:

Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6709. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated December 18, 1992, the Governments of the United States and Macau agreed to amend the 1993 limits for certain cotton, wool, man-made fiber, silk blend and other vegetable

fiber textile products, produced or manufactured in Macau.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 49074, published on October 29, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 23, 1992.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 23, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period beginning on January 1, 1993 and extending through December 31, 1993.

Effective on January 5, 1993, pursuant to a Memorandum of Understanding dated December 18, 1992, between the Governments of the United States and Macau, you are directed to amend the directive dated October 23, 1992, to increase the limits for the following categories:

Category	Adjusted twelve-month limit ¹
Aggregate 200-239, 300-369, 400-469, 600-670 and 800-899, as a group.	94,317,170 square meters equivalent.
Group I 200-239, 300-369, 600-670 and 800- 899, as a group.	90,701,418 square meters equivalent.
Sublevel in Group I 845/846	102,000 dozen.

¹ The limits have not been adjusted to account for any imports exported after December 31, 1992.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-31698 Filed 12-29-92; 8:45 am]

BILLING CODE 3510-DR-F

Establishment of Sublimits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Taiwan

December 23, 1992.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).**ACTION:** Issuing a directive to the Commissioner of Customs establishing sublimits for the new agreement year.**EFFECTIVE DATE:** January 1, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927-6719. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A Memorandum of Understanding (MOU) dated December 18, 1992 between the Coordination Council for North American Affairs (CCNAA) and the American Institute in Taiwan (AIT) establishes sublimits for Categories 347-W/348-W and 647-W/648-W for the period beginning January 1, 1993 and extending through December 31, 1993.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION:** Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 53885, published on November 13, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement and the MOU, but are designed to assist only in the

implementation of certain of their provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 23, 1992.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 6, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Taiwan and exported during the twelve-month period beginning on January 1, 1993 and extending through December 31, 1993.

Effective on January 1, 1993, pursuant to the Memorandum of Understanding (MOU) dated December 18, 1992, you are directed to amend the November 6, 1992 directive to include sublimits 347-W/348-W and 647-W/648-W, as follows:

Category	Twelve-month restraint limit
Sublevels in Group II	
347/348	1,072,919 dozen of which not more than 1,072,919 dozen shall be in Categories 347-W/348-W ¹ .
647/648	5,248,544 dozen of which not more than 5,248,544 dozen shall be in Categories 647-W/648-W ² .

¹Category 347-W: only HTS numbers 6203.19.1020, 6203.19.4010, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.48.3020, 6210.40.2035, 6211.20.1520, 6211.20.3010 and 6211.32.0040; Category 348-W: only HTS numbers 6204.12.0030, 6204.19.3030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.3010, 6204.69.9010, 6210.50.2035, 6211.20.1550, 6211.20.6010, 6211.42.0030 and 6217.90.0050.

²Category 647-W: only HTS numbers 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.0000, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2010, 6203.49.2030, 6203.49.2060, 6203.49.3030, 6210.40.1035, 6211.20.1525, 6211.20.3030 and 6211.33.0030; Category 648-W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2550, 6204.69.3030, 6204.69.9030, 6210.50.1035, 6211.20.1555, 6211.20.6030, 6211.43.0040 and 6217.90.0060.

Imports charged to these category limits for the period January 1, 1992 through December 31, 1992 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the Bilateral Textile Agreement, effected by exchange of notes dated August 21, 1990 and September 28, 1990, as amended, and the MOU dated December 18, 1992.

The Committee for the Implementation of Textile Agreements has determined that

these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 92-31605 Filed 12-29-92; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE**Air Force****Record of Decision for the Basing of the B-2 Bomber, T-38 and A/OA-10 at Whiteman Air Force Base, MO**

On December 7, 1992 the Air Force signed the Record of Decision (ROD) for the Supplement to the Environmental Impact Statement (EIS) for the Basing of the B-2 Bomber at Whiteman Air Force Base (AFB), Missouri.

The United States Air Force has decided to continue with the basing of the B-2 bomber and proceed with the realignment of the A/OA-10 to Whiteman AFB. This action consists of three component actions with three types of aircraft; the B-2 Advanced Technology Bomber, the A/OA-10 Thunderbolt, and the T-38 Talon jet trainer. Two of these components, the B-2 and the T-38 are interrelated actions and the A/OA-10 is dictated pursuant to the Defense Base Closure and Realignment Act of 1990 (Public Law 101-510).

The basing action principally involves the beddown of aircraft, the transfer of assets and personnel, and the continued construction of facilities on Whiteman AFB to accommodate the overall action. The transfer of the T-38s to Whiteman AFB from other installations hosting a training mission is programmed for fiscal year (FY) 1993, prior to the arrival of the B-2. The arrival of the B-2 aircraft could begin during calendar year 1993 and continue through 1999. The A/OA-10 will be transferred from Richard-Gebaur Air Reserve Base, beginning in the forth quarter of FY 1994.

The implementation of the basing action and associated mitigation measures will proceed with minimal adverse impact to the environment. This action conforms with applicable Federal, State and local statutes and regulations, and all reasonable and practicable efforts have been incorporated to minimize harm to the local public and environment.

Any questions regarding this matter should be directed to HQ Air Combat Command/CEVA, 129 Andrews St Ste

346, Langley AFB, VA 23665-2769,
Attn: Capt Doug Hulings, (804) 764-
3056.

Patsy F. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 92-31674 Filed 12-29-92; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Environmental Impact Statement (EIS) for the Reuse and Disposal of Army Materials Technology Laboratory, Watertown, MA

AGENCY: United States Army,
Department of Defense.

ACTION: Notice of intent.

SUMMARY: This Notice of Intent announces the preparation of a Draft Environmental Impact Statement (DEIS) for disposal and reuse of the entire property and/or parcels of the Army Materials Technology Laboratory (AMTL), Watertown, MA. In accordance with the Defense Base Closure and Realignment Act of 1988, Public Law 100-526, AMTL is scheduled for closure in September 1995. As required by the National Environmental Policy Act of 1969 (NEPA), the Army will assess the environmental and socio-economic impacts of disposal and reuse of AMTL, by using the "no action" alternative as a baseline. Additional alternatives include public use, industrial and commercial use and open space or recreation use. These alternatives and others will be further defined in coordination with the local community and Office of the Economic Adjustment.

SCOPING: The public is invited to participate in the scoping meeting, review of the DEIS and a public meeting after the DEIS is published. The scoping meeting is scheduled for early February. The specific date, location and time will be published in the local newspapers 15 days prior.

SUPPLEMENTARY INFORMATION: For further information, please contact Mr. Robert Jameson, HQ US Army Materiel Command, ATTN: AMCSO, 5001 Eisenhower Avenue, Alexandria, VA 22333-0001 or Mr. David Rosa, (703) 671-7900.

Dated: December 21, 1991.

Lewis D. Walker,

Deputy Assistant Secretary of the Army
(Environmental, Safety & Occupational Health),
OASA (IL&E).

[FR Doc. 92-31692 Filed 12-29-92; 8:45 am]

BILLING CODE 3710-06-M

Environmental Impact Statement (EIS) for the Reuse and Disposal of the Harry Diamond Laboratory Facility, Woodbridge, VA

AGENCY: United States Army,
Department of Defense.

ACTION: Notice of intent.

SUMMARY: The action to be evaluated by this EIS is the disposal and reuse of the Harry Diamond Laboratory Facility, Woodbridge, Virginia, in accordance with the Defense Base Closure and Realignment Act of 1990, Public Law 101-510. The EIS will evaluate alternative methods of implementing the Commission's decision, including alternative reuses of the disposed property. Potential reuse alternatives will be explored as further information about the Laboratory facility is developed. Development of the potential alternative reuses of the disposed property will be made in conjunction with the local community, the Office of Economic Adjustment, and the Army. As required by the National Environmental Policy Act of 1969 (NEPA), the Army will also analyze the "no action" alternative as a baseline for gauging the impacts of the disposal and reuse.

SCOPING: The public will be invited to participate in the scoping meeting, the review of the draft Environmental Impact Statement and a public meeting that will be held after the draft EIS is made available. The location and time of the scoping meeting, to be scheduled during the month of February 1993, will be announced in the local news media. Release of the draft EIS for public comment and the public meeting will also be announced in the local news media as the dates are established.

SUPPLEMENTARY INFORMATION: For further information, please contact Mr. Bill Tagalicod, U.S. Army Corps of Engineers, Baltimore District, at (410) 962-4939.

Dated: December 21, 1992.

Lewis D. Walker,

Deputy Assistant Secretary of the Army
(Environmental, Safety & Occupational Health),
OASA (I, L&E).

[FR Doc. 92-31691 Filed 12-29-92; 8:45 am]

BILLING CODE 3710-06-M

Environmental Impact Statement (EIS) for the Reuse and Disposal of Jefferson Proving Ground, Madison, IN

AGENCY: United States Army,
Department of Defense.

ACTION: Notice of intent.

SUMMARY: This Notice of Intent announces the preparation of a Draft Environmental Impact Statement (DEIS) for disposal and reuse of the entire property and/or parcels of the Jefferson Proving Ground (JPG), Madison, Indiana. In accordance with the Defense Base Closure and Realignment Act of 1988, Public Law 100-526, JPG is scheduled for closure in September 1995. As required by the National Environmental Policy Act of 1969 (NEPA), the Army will assess the environmental and socio-economic impacts of disposal and reuse of JPG, by using the "no action" alternative as a baseline. Additional alternatives include resort or leisure facility (north of impact area), unexploded ordnance research and development center, light industry (south of firing line), and third party testing. These alternatives and others will be further defined in coordination with the local community and the Office of Economic Adjustment.

SCOPING: The public is invited to participate in the scoping meeting, review of the DEIS and a public meeting after the DEIS is published. The scoping meeting is scheduled for early February. The specific date, location and time will be published in the local newspapers 15 days prior.

SUPPLEMENTARY INFORMATION: For further information, please contact Mr. Robert Jameson, HQ US Army Materiel Command, ATTN: AMCSO, 5001 Eisenhower Avenue, Alexandria, VA 22333-0001 or Mr. David Rosa, (703) 671-7900.

Dated: December 21, 1992.

Lewis D. Walker,

Deputy Assistant Secretary of the Army
(Environmental, Safety & Occupational
Health), OASA (IL&E).

[FR Doc. 92-31693 Filed 12-29-92; 8:45 am]

BILLING CODE 3710-06-M

Environmental Impact Statement (EIS) for the Reuse and Disposal of Sacramento Army Depot

AGENCY: United States Army,
Department of Defense.

ACTION: Notice of intent.

SUMMARY: The action to be evaluated by this EIS is the disposal and reuse of Sacramento Army Depot, California, in accordance with the Defense Base Closure and Realignment Act of 1990, Public Law 101-510. The EIS will evaluate alternative methods of implementing the Commission's decision, including alternative reuses of the disposed property. Potential reuse alternatives will be explored as further

information about Sacramento Army Depot's environmental status is developed. Development of the potential alternative reuses of the disposed property will be made in conjunction with the local community, the Office of Economic Adjustment, and the Army. As required by the National Environmental Policy Act of 1969 (NEPA), the Army will also analyze the "no action" alternative as a baseline for gauging the impacts of the disposal and reuse.

SCOPING: The public will be invited to participate in the scoping meeting, the review of the draft Environmental Impact Statement and a public meeting that will be held after the draft EIS is made available. The location and time of the scoping meeting, to be scheduled during the month of January, 1993, will be announced in the local news media. Release of the draft EIS for public comment and the public meeting will also be announced in the local news media as the dates are established.

SUPPLEMENTARY INFORMATION: For further information, please contact Mr. Wandell Carlton, Sacramento District, Corps of Engineers, (916) 557-7424.

Dated: December 21, 1992.

Lewis D. Walker,

Deputy Assistant Secretary of the Army
(Environment, Safety & Occupational Health),
OASA (I&E).

[FR Doc. 92-31694 Filed 12-29-92; 8:45 am]

BILLING CODE 3710-06-M

Supplemental Notice of Intent To Prepare a Draft Supplemental Environmental Impact Statement and Environmental Impact Report (DSEIS/EIR) for Oakland Harbor, Deep Draft Navigation Improvements, Alameda County, California

AGENCY: U.S. Army Corps of Engineers, San Francisco District, DOD.

ACTION: Supplemental notice of intent

SUMMARY: *Proposed Action.* The Corps of Engineers, San Francisco District, has been authorized by the Water Resources Development Act of 1986 (WRDA 1986), 99th Congress, 2nd Session, Public Law 99-662, to improve the navigation channels at Oakland Harbor in San Francisco Bay. The Port of Oakland is the non-Federal (i.e., local) sponsor of the Federal project and will participate in the project cost in accordance with WRDA 1986. The environmental impacts of these improvements have been previously evaluated in Final Environmental Impact Statements filed with the Environmental Protection Agency (EPA) in 1981 and 1985 and in

a Supplemental Environmental Impact Statement filed with EPA in 1988. The Corps of Engineers, as the lead agency under the National Environmental Policy Act (NEPA), and the Port of Oakland, as the lead agency under the California Environmental Quality Act (CEQA), will prepare a joint Draft Supplemental Environmental Impact Statement/Environmental Impact Report for the entire project. The subject Supplemental Environmental Impact Statement/Environmental Impact Report will address changes in the authorized project related to dredged material disposal and update information from previous environmental documents since 1988.

An earlier NOI for the project was published in the June 27, 1991 *Federal Register*, and two scoping meetings, to receive agency and public comments on the project, were conducted in August 1991. This Supplemental NOI has been prepared to provide agencies and the public an opportunity to comment on two dredged material disposal alternatives which have been formulated since the June 1991 NOI.

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. Roger Goldern, USAED, San Francisco, 211 Main Street, San Francisco, CA 94105-1905, telephone (415) 744-3344.

SUPPLEMENTARY INFORMATION:

Construction of the authorized project for Oakland Harbor will generate an estimated 6.5 million cubic yards of dredged material. Disposal of this dredged material has been the subject of controversy in the San Francisco Bay Area. As originally authorized, disposal of the dredged material was to be at a contemporary aquatic site identified by the U.S. Environmental Protection Agency as "SF-11", near Alcatraz Island in Central San Francisco Bay. Due to the mounding of dredged material, initially discovered in 1982, historically disposed at the Alcatraz Site and increased public concern about the impact of large scale dredged material disposal events on the resources of San Francisco Bay, ocean disposal of Oakland Harbor dredged material was proposed in 1988. A Supplemental EIS was prepared to evaluate the impacts of direct ocean disposal and to designate an ocean disposal site under Section 103 of the Marine Protection Research and Sanctuaries Act (MPRSA) of 1972. Use of the ocean disposal site was given limited approval by EPA. The Record of Decision following the Final Supplemental EIS reduced the dredged material quantity for ocean disposal to 500,000 cubic yards and directed additional environmental

documentation be prepared before construction of the remainder of the authorized project. After the Record of Decision was signed, the project was challenged in Federal Court by local fisherman, and construction of the reduced project was delayed. The Federal Court decided not to enjoin the project, and the local sponsor, by Section 215 Agreement (42 USCA sec. 1962D-5A) with the Corps, started construction in May 1988. A few days after this construction began, the project was enjoined in State Court by a suite brought by San Mateo County, and construction was stopped. Both the Federal and State courts retain jurisdiction over the Project. In 1992, an environmental Assessment (April 1992) and Finding of No Significant Impact (May 1992) were prepared to deepen a portion of the Oakland Inner Harbor Channel from -35 feet MLLW to -38 feet MLLW (Mean Low Lower Water). Deepening of this portion of the Oakland Inner Harbor channel from -35 to -38 feet MLLW commenced in September 1992 with an estimated 541,000 cys of dredged sediment disposed at the Alcatraz aquatic site and an estimated 21,000 cys disposed initially at the Port Sonoma-Marin, Sonoma County upland drying pond site, to be eventually (following drying) transported by truck to the Redwood Landfill site, located north of the City of Novato, Marin County, for final disposition. Deepening of this portion of the Oakland Inner Harbor channel was completed in December 1992.

Authorized deep-draft navigation improvements to Oakland Harbor would deepen the channels from -35 feet Mean Low Lower Water (MLLW) (Outer Harbor) or -38 feet MLLW (most of the Inner Harbor) to -42 feet MLLW. Approximately 3.4 miles of the Outer Harbor would be deepened and enlarged. Approximately 4.0 miles of the Inner Harbor channel would be deepened between the Entrance Channel reach and the Howard Terminal. The Entrance Channel, an area at channel mile 3.0, and the upper reach of the Inner Harbor channel would be widened. An existing turning area in the Outer Harbor would be widened. A new turning basin for the Inner Harbor would be provided in the area of the Howard Terminal. In addition, berthing areas served by the project would be deepened, by the local sponsor, to depths commensurate with the improved Federal channels. All of these improvements will require the removal and disposal of approximately 6.5 million cubic yards of channel bottom sediments. Also, relocating of

existing submarine utilities and the removal of existing pier structures in the project vicinity are included in the proposed construction work.

Alternatives

Dredged material disposal alternatives to be considered in the DSEIS/EIR are aquatic and land disposal. Dredged material disposal in the San Francisco Bay Area is the subject of intensive study by the Corps of Engineers, the Environmental Protection Agency, and two state regulatory agencies, under the Long-Term Management Strategy for the Disposal of Dredged Material in the San Francisco Bay Region (LTMS). The disposal alternatives to be discussed in the DSEIS/EIR will reflect the LTMS work and address specific sites for the Oakland project.

A number of options are under consideration for disposal of the dredged material. These disposal options could be implemented separately or in combination, depending upon the nature of the sediments that each disposal site can accept and the respective disposal site capacity. The selection of disposal site alternatives will be based upon environmental and economic factors. Generally the disposal site options currently under consideration (and listed in the previous NOI) are:

- Disposal at an ocean site designated by the Environmental Protection Agency for that purpose under section 102 of the Marine Protection, Research, and Sanctuaries Act;
- Confined aquatic disposal at the Bayfarm Island borrow area in San Francisco Bay, offshore of the City of Alameda in Alameda County;
- Wetland restoration at the proposed Sonoma Baylands on land owned by the Sonoma Land Trust near San Pablo Bay and the mouth of the Petaluma River in Sonoma County; and
- Fill for recreational or other uses on Port of Oakland property at the site currently occupied by the Lew F. Galbraith Golf Course in Alameda County.

The two additional dredged material disposal options to be considered in the DSEIS/EIR are:

- Initial disposal, with drying of the dredged material, on the Leonard Ranch property in Sonoma County which is owned by the Sonoma Land Trust and located near San Pablo Bay. Ultimate use of the disposed dredged material would be for cover or capping material at nearby landfills; and
- Fill for disposal and wetland restoration in Solano County on land

owned by the Catellus Corporation as part of the proposed Montezuma Wetland project.

Scoping

The San Francisco District, Corps of Engineers and the Port of Oakland invite the agencies and public to provide written comments on the two additional dredged material disposal options which have been formulated since the June 1992 NOI. No public scoping meetings have been scheduled for the purpose of this Supplemental NOI. Instead, this Supplemental NOI will be direct mailed to the almost 1,300 Federal, state, and local agencies, organizations, groups, and interested individuals currently on the project mailing list.

Your views as to the scope and content of the environmental information to be included in the Supplemental EIS/EIR are important. To be most helpful, the scoping comments should clearly describe specific environmental issues or subjects which the commentator wishes addressed. Written comments should be mailed no later than January 22, 1993 to: Mr. Roger Golden, Corps of Engineers, San Francisco District, 211 Main Street, room 918, San Francisco, CA 94105-1905.

The Corps' experience has shown that the significant issues associated with the Oakland Project primarily concern the disposal of the dredged material. The following dredging and disposal impacts will be discussed in the SEIS/EIR.

1. Acute water quality impacts (aquatic disposal).
2. Chronic and sublethal water quality impacts (aquatic disposal).
3. Aquatic resources impacts (aquatic disposal).
4. Water quality impacts (land disposal).
5. Terrestrial impacts (land disposal).
6. Wetland impacts (land disposal).
7. Traffic and Air quality impacts (land disposal).
8. Contaminated material impacts (land disposal).
9. Disposal site capacity impacts (land and aquatic disposal).
10. Socio-Economic impacts (aquatic and land disposal).

The SEIS/EIR will be used as the primary information document to secure concurrence in a federal Coastal Zone Consistency Determination. In addition, the SEIS/EIR will be used by the local sponsor to meet its responsibilities under the California Environmental Quality Act (CEQA), and may also be used by the San Francisco Bay Regional Water Quality Control Board to meet its

responsibilities under the same Act. Other reviews in which the SEIS/EIR may be a secondary source of information are: Fish and Wildlife Coordination Act, Marine Protection, Research and Sanctuaries Act, Endangered Species Act, Clean Air Act, Clean Water Act, and "trustee agency" reviews by the State of California.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-31741 Filed 12-29-92; 8:45 am]

BILLING CODE 3710-SF-M

Army Advisory Panel on ROTC Affairs; Notice of Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following panel meeting:

NAME OF PANEL: Army Advisory Panel on ROTC Affairs.

DATE OF MEETING: February 16-17, 1993.

PLACE: President's Conference Room, Florida A&M University, Tallahassee, Florida.

TIME: 8 a.m.—5 p.m., February 16, 1993.
8 a.m.—12 p.m., February 17, 1993.

PROPOSED AGENDA: The meeting will consist of briefings and discussions. The meeting is open to the public. Any interested person may appear before or file a statement with the Panel at the time, and in the manner, permitted by the Panel. It is projected that the following events will take place during the meeting. After opening remarks by Major General Wallace C. Arnold and the chairman of the Panel, Dr. James O. Williams, any administrative matters requiring attention will be resolved. The meeting will then proceed with a variety of recent ROTC Cadet Command initiatives. Major General Arnold will provide an overview of the significant changes since the June 1992 meeting at Fort Bragg, NC. Briefing on February 16 include: Scholarship Update, Missioning Update, Advertising Strategy, Marketing Update, Spring Gold and Green to Gold Updates, Camps Update, Cadet Professional Development training Update, the High School Program Update, Nursing Update and the Governmental Agency Program (GAP) Update. On February 17 the Army Advisory Panel on ROTC Affairs will meet in general session to formulate recommendations, consider progress made on previous Panel recommendations, and to select a date for the next Panel meeting.

POINT OF CONTACT: For additional information contact Mr. Roger

Spadafora, Executive Director, Army Advisory Panel, at (804) 727-4595.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-31740 Filed 12-29-92; 8:45 am]

BILLING CODE 3710-06-M

Corp of Engineers, Department of the Army

Regulatory Guidance Letters Issued by the Corps of Engineers

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: The purpose of this notice is to provide a copy of the Regulatory Guidance Letter (RGL 92-5) to all known interested parties. RGL's are used by the Corps of Engineers as a means to transmit guidance on the permit program (33 CFR parts 320-330) to its division and district engineers. The Corps of Engineers publishes RGL's in the *Federal Register* upon issuance as a means of informing the public of Corps guidance.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Collinson, Regulatory Branch, Office of the Chief of Engineers at (202) 272-1782.

SUPPLEMENTARY INFORMATION: RGL 92-5, Subject: Alternatives Analysis Under the section 404(b)(1) Guidelines for Projects Subject to Modification Under the Clean Air Act is hereby published as follows:

Regulatory Guidance Letter, RGL 92-5.
Date: 29 October 1992, expires: 31 December 1997.

Subject: Alternatives Analysis Under the section 404(b)(1) Guidelines for Projects Subject to Modification Under the Clean Air Act.

1. Enclosed for implementation is a joint Army Corps of Engineers/Environmental Protection Agency Memorandum to the Field on alternatives analysis for existing power plants that must be modified to meet requirements of the 1990 Clean Air Act. This guidance was developed jointly by the Corps and EPA.

2. This guidance expires 31 December 1997 unless sooner revised or rescinded.

For the Director of Civil Works:

John P. Elmore, P.E.,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

EPA/Corps Joint Memorandum for the Field.

Subject: Alternatives Analysis under the section 404(b)(1) Guidelines for

Projects to Modification Under the Clean Air Act.

1. The 1990 Clean Air Act (CAA) amendments require more electric generating plants to reduce emissions of sulfur dioxide in phases beginning in 1995 and requiring full compliance by 2010. The Congressional endorsement of the industry's ability to select the most effective compliance method (e.g., sulfur dioxide scrubbers, low sulfur coal, or other methods) recognizes the expertise of the industry in these cases and is a fundamental element in the CAA market-based pollution control program. Given the need for cooling water, a substantial number of electric power generating plants are located adjacent, or in close proximity, to waters of the United States, including wetlands. Depending on the method chosen by the plants to reduce emissions, we expect that these facilities will be applying for Clean Water Act section 404 permits for certain proposed activities.

2. The analysis and regulation under section 404 of the Clean Water Act of activities in waters of the United States conducted by specific power plants to comply with the 1990 Clean Air Act amendments must ensure protection of the aquatic environment consistent with the requirements of the Clean Water Act. The review of applications for such projects will fully consider, consistent with the requirements under the section 404(b)(1) Guidelines, all practicable alternatives including non-aquatic alternatives, for proposed discharges associated with the method selected by the utility to comply with the 1990 Clean Air Act amendments. For the purposes of the section 404(b)(1) Guidelines analysis, the project purpose will be that pollutant reduction method selected by the permit applicant.

3. For example, a utility may have decided to install sulfur dioxide scrubbers on an existing power plant in order to meet the new 1990 Clean Air Act standards. The proposed construction of the scrubbers, treatment ponds and a barge unloading facility could impact wetlands. In this case, the section 404 review would evaluate practicable alternative locations and configurations for the scrubbers, ponds and the docking facilities. The analysis will also consider practicable alternatives which satisfy the project purpose (i.e., installing scrubbers) but which have a less adverse impact on the aquatic environment or do not involve discharges into waters of the United States. However, in order to best effectuate Congressional intent reflected in the CAA that electric utilities retain

flexibility to reduce sulfur dioxide emissions in the most cost effective manner, the section 404 review should not evaluate alternative methods of complying with the Clean Air Act standards not selected by the applicant (e.g., in this example use of low sulfur coal).

4. In evaluating the scope of practicable alternatives which satisfy the project purpose (e.g., constructing additional scrubber capacity), the alternatives analysis should not be influenced by the possibility that, based on a conclusion that practicable upland alternatives are available to the applicant, the project proponent may decide to pursue other options for meeting Clean Air Act requirements. Continuing the above example, a Corps determination that practicable upland alternatives are available for scrubber waste disposal should not be affected by the possibility that an applicant may subsequently decide to select a different method for meeting the Clean Air Act standards (e.g., use of low sulfur coal that reduces waste generated by scrubbers).

5. The Corps and EPA will also recognize the tight time-frames under which the industry must meet these new air quality standards.

Robert H. Wayland,

Director, Office of Wetlands, Oceans and Watersheds.

John P. Elmore,

Chief, Operations, Construction and Readiness Division, Directorate of Civil Works.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-31733 Filed 12-29-92; 8:45 am]

BILLING CODE 3710-02-M

Wetland Delineator Certification Program

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce that the U.S. Army Corps of Engineers, in accordance with section 307(e) of the Water Resources Development Act of 1990, is establishing a Wetland Delineator Certification Program (WDCP). Section 307(e) authorizes the Secretary of the Army to establish a program for the training and certification of individuals as wetland delineators, and to carry out demonstration projects in districts of the Corps of Engineers prior to establishing the WDCP nationwide. The intent of the WDCP is: (1) To improve the quality and

consistency of wetland delineations submitted to Corps Districts in conjunction with applications for authorization to perform activities in wetlands pursuant to section 404 of the Clean Water Act, and (2) to streamline the regulatory process by developing procedures for expediting consideration and acceptance of delineations performed by certified delineators.

FOR FURTHER INFORMATION CONTACT: If you wish to be certified in the State of Washington, contact the U.S. Army Corps of Engineers, Seattle District, Attn: CENPS-EN-PL-ER, P.O. Box 3755, Seattle, WA 98124-2255, or call Ms. Kathy Kunz, (206) 764-3624. If you wish to be certified in the State of Maryland, contact the U.S. Army Corps of Engineers, Baltimore District, Attn: CENAB-OP-RX, P.O. Box 1715, Baltimore, MD 21203-1715, or call Ms. Debrah Nizer, (410) 962-1843. If you wish to be certified in the State of Florida, contact the U.S. Army Corps of Engineers, Jacksonville District, Attn: CESAJ-RD, P.O. Box 4970, Jacksonville, FL 32232-0019, or call Mr. Ron Silver, (904) 232-2502. To obtain additional information on this program, you may also contact Ms. Karen Kochenbach, Office of the Chief of Engineers, Attn: CECW-OR, 20 Massachusetts Avenue NW., Washington, DC 20314-1000, (202) 272-0199.

SUPPLEMENTARY INFORMATION: The WDCP demonstration projects will begin March 1, 1993, in the States of Washington, Maryland, and Florida. The demonstration projects in these three States will be administered by the Seattle, Baltimore, and Jacksonville Districts, respectively. The three districts will begin accepting applications for certification and certifying qualified wetland delineators on February 1, 1993, and begin accepting delineations by certified delineators on March 1, 1993. Implementation of the final WDCP in all Corps districts is anticipated to begin in March of 1994, at which time the demonstration projects will end.

The demonstration projects will entail testing provisional certification of wetland delineators. If the district determines that an applicant for certification as a wetland delineator is capable of making valid wetland delineations, the district will issue a provisional certification. Provisional certifications will be based on successful completion of a written examination and demonstrated wetland delineation ability during a field practicum. Provisional certifications will only be valid during the demonstration phase of the WDCP and

only in the certifying district. However, provisional certifications may be considered valid as final certifications are used in a broader geographic area once the final WDCP is developed and implemented nationwide.

Although there will be no requirement for wetland delineators to be certified, permit applications accompanied by a wetland delineation performed by a certified delineator will be handled more expeditiously with respect to consideration and acceptance of wetland delineations. However, the districts will retain discretion regarding acceptance of wetland delineations accomplished by certified delineators.

Training in the Corps approach to wetland delineation (i.e., currently the Corps 1987 Wetland Delineation Manual and related technical and policy guidance) will be mandatory prerequisite for all WDCP applicants after the demonstration projects. A training package for the WDCP, including the appropriate training materials, will be available to interested parties to establish training for the purpose of meeting this prerequisite in the future. The requirement for such training is waived during the demonstration phase of the WDCP.

Details concerning participation in the demonstration phase of the WDCP in the States of Washington, Maryland and Florida, including application materials, will be available from the Seattle, Baltimore, and Jacksonville Districts in late January. Participation in the demonstration projects in these three districts is open to all. However, you must appear in person for the written and field test.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 92-31734 Filed 12-29-92; 8:45 am]

BILLING CODE 3710-92-M

DEPARTMENT OF EDUCATION

Office of Postsecondary Education; State Student Incentive Grant Program

AGENCY: Department of Education.

ACTION: Notice of the closing date for receipt of State applications for fiscal year 1993.

SUMMARY: The Secretary of Education (Secretary) gives notice of the closing date for receipt of State applications for fiscal year 1993 funds under the State Student Incentive Grant (SSIG) Program. This program, through matching formula grants to States for student awards, provides grants to students with substantial financial need. The SSIG Program supports AMERICA 2000, the

President's strategy for moving the Nation toward the National Education Goals, by enhancing opportunities for postsecondary education. The National Education Goals call for increasing the rate at which students graduate from high school and pursue high quality postsecondary education.

A State that desires to receive SSIG funds for this fiscal year must have an agreement with the Secretary as provided under section 1203(a) of the Higher Education Act of 1965, as amended (HEA). The State must submit an application through the State agency that administered its SSIG Program as of July 1, 1985, unless the Governor has subsequently designated, and the Secretary has approved, a different State agency.

The Secretary is authorized to accept applications from the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Island (Palau), provided it remains a trust territory. (The future eligibility of the Republic of Palau will be determined by the provisions of the Compact of Free Association.) Authority for this program is contained in sections 415A through 415E of the HEA. (20 U.S.C. 1070c-1070c-4)

CLOSING DATE FOR TRANSMITTAL OF APPLICATIONS: An application for fiscal year 1993 SSIG funds must be mailed or hand-delivered by April 16, 1993.

APPLICATION FORM: The required application form for receiving SSIG funds will be mailed to officials of the appropriate State agency in each State at least 30 days before the closing date. Applications must be prepared and submitted in accordance with the HEA and the program regulations cited in this notice. The Secretary strongly urges that applicants only submit information that is requested.

APPLICATIONS DELIVERED BY MAIL: An application sent by mail must be addressed to: Mr. Fred Sellers, Chief, Pell and State Grant Section, room 4018, ROB-3, U.S. Department of Education, Student Financial Assistance Programs, 400 Maryland Avenue, SW., Washington, DC 20202-5447.

The Secretary will accept the following proof of mailing:

- (1) A legibly dated U.S. Postal Service postmark;
- (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service;
- (3) A dated shipping label, invoice, or receipt from a commercial carrier; or

(4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not dated by the U.S. Postal Service. The Department of Education encourages applicants to use registered or at least first-class mail.

A late applicant cannot be assured that its application will be considered for fiscal year 1993 funding.

APPLICATIONS DELIVERED BY HAND: An application that is hand-delivered must be taken to Mr. Fred Sellers, U.S. Department of Education, Student Financial Assistance Programs, 7th and D Streets, SW., room 4018, General Service Administration Regional Office Building #3, Washington, DC. Hand-delivered applications will be accepted between 8 a.m. and 4:30 p.m. daily (Eastern time), except Saturdays, Sundays, and Federal holidays.

An application that is hand delivered will not be accepted after 4:30 p.m. on the closing date.

PROGRAM INFORMATION: Section 415C(a) of the HEA requires that an annual application be submitted for a State to receive SSIG funds. In preparing the application, each State agency should be guided by the table of allotments provided in the application package.

State allotments are determined according to the statutorily mandated formula under section 415B of the HEA and are not negotiable. A State may also request its share of reallocation, in addition to its basic allotment, which is contingent upon the availability of such additional funds.

In fiscal year 1992, all 50 States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Island (Palau), and the Commonwealth of the Northern Mariana Islands participated in the SSIG Program.

APPLICABLE REGULATIONS: The following regulations are applicable to the SSIG Program:

(1) The SSIG Program regulations in 34 CFR part 692.

(2) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 76 (State-Administered Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part

82 (New Restrictions on Lobbying), part 85 (Governmentwide Debarment and Suspension (Nonprocurement), and Governmentwide Requirements for Drug-Free Workplace (Grants)), and part 86 (Drug-Free Schools and Campuses).

(3) The regulations in 34 CFR part 604 that implement section 1203 of the HEA (Federal-State Relationship Agreements).

(4) The Student Assistance General Provisions in 34 CFR part 668.

FOR FURTHER INFORMATION: For further information contact Mr. Fred Sellers, Chief, Pell and State Grant Section, U.S. Department of Education, Student Financial Assistance Programs, Washington, DC 20202-5447; telephone (202) 708-4607. Hearing-impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in Washington, DC, 202 area code, 708-9300) between 8 a.m. and 7 p.m., Eastern time. (20 U.S.C. 1070c-1070c-4)

(Catalog of Federal Domestic Assistance Number 84.069, State Student Incentive Grant Program)

Dated: December 22, 1992.

Carolynn Reid-Wallace,

Assistant Secretary for Postsecondary Education.

[FR Doc. 92-31636 Filed 12-29-92; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.158A]

State Systems for Transition Services for Youth With Disabilities Program; Notice Inviting Applications for New Awards for Fiscal Year

Purpose of Program: The purpose of this program is to provide Federal assistance to States to develop, implement, and improve systems to provide transition services for youth with disabilities from age 14 through the age they exit school.

This notice supports AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by assisting those with disabilities through improved services and better trained service providers.

Eligible Applicants: Eligible applicants are a State educational agency and a State vocational rehabilitation agency that submit a joint application; or if a vocational rehabilitation agency does not choose to participate, a State educational agency and a State agency that provides transition services to individuals who are leaving programs under the Act, that submit a joint application. States who have previously received a grant under this program are not eligible to apply.

Deadline for Transmittal of Applications: April 9, 1993.

Deadline for Intergovernmental Review: June 9, 1993.

Applications Available: January 4, 1993.

Available Funds: \$2,500,000.

Estimated Range of Awards:

\$450,000-550,000.

Estimated Size of Awards: \$500,000.

Estimated Number of Awards: 5.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR parts 325.

For Application or Information:

Joseph Clair, U.S. Department of Education, 400 Maryland Avenue, SW., room 4622, Switzer Building, Washington, DC 20202-2466.

Telephone: (202) 205-9503. Deaf and hearing impaired individuals may call: (202) 205-6170.

Program Authority: 20 U.S.C. 1425(e).

Dated: December 23, 1992.

Robert R. Davila,

Assistant Secretary, Office of Special Education, and Rehabilitative Services.

[FR Doc. 92-31635 Filed 12-29-92; 8:45 am]

BILLING CODE 4000-01-M

National Education Commission on Time and Learning; Hearing

AGENCY: National Education Commission on Time and Learning, Education.

ACTION: Notice of public hearing.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming public hearing of the National Education Commission on Time and Learning. This notice also describes the functions of the Commission. Notice of this hearing is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE AND TIME: January 14, 1993 from 1 p.m. to 4:30 p.m. January 15, 1993 from 8:30 a.m. to 4 p.m.

ADDRESSES: John Milne Board Room, Albuquerque Public Schools, 725 University Blvd. SE., Albuquerque, NM 87106. Telephone: Toni Martorelli, (505) 842-4696.

FOR FURTHER INFORMATION CONTACT: Julia Anna Anderson, Deputy Executive Director, 1255 22nd Street, NW., suite 502 Washington, DC 20202-7591. Telephone: (202) 653-5063.

SUPPLEMENTARY INFORMATION: The National Education Commission on Time and Learning is established under section 102 of the Education Council Act of 1991 (20 U.S.C. 1221-1). The Commission is established to examine the quality and adequacy of the study and learning time of elementary and secondary students in the United States, including issues regarding the length of the school day and year, how time is being used for academic subjects, the use of incentives, how time is used outside of school, the extent and role of homework, year-round professional opportunities for teachers, the use of school facilities for extended learning programs, if appropriate, a model for adopting a longer day or year, suggested changes for state laws and regulations, and an analysis and estimate of the additional costs.

The Hearing of the Commission is open to the public. The proposed agenda for January 14 includes: Testimony from invited participants and the general public will be presented on the mandates as outlined in Public Law 102-62. The proposed agenda for January 15 includes: Testimony from national experts on research related to student learning and motivation and administrative matters of the Commission. Records are kept of all Commission proceedings, and are available for public inspection at the Office of the Commission at 1255 22nd Street, NW., suite 502, Washington, DC 20202-7591 from the hours of 9 a.m. to 5:30 p.m.

Dated: December 23, 1992.

John Hodge Jones,

Chairman, National Education Commission on Time and Learning.

[FR Doc. 92-31623 Filed 12-29-92; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Sweden

concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involves approval of the following retransfer: RTD/EU(SW)-83 for the transfer of fuel rods containing 18 grams of uranium enriched to 5 percent in the isotope uranium-235 and 22 grams of plutonium from Sweden to France for post-irradiation tests. After completion of the tests the material will remain in France.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC, on December 23, 1992.

Salvador N. Ceja,

Acting Director, Office of Nonproliferation Policy.

[FR Doc. 92-31728 Filed 12-29-92; 8:45 am]

BILLING CODE 9450-01-M

Office of Energy Research

Energy Research Financial Assistance Program Notice 93-07; Energy Biosciences

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant preapplications.

SUMMARY: The Office of Basic Energy Sciences of the Office of Energy Research (ER), U.S. Department of Energy (DOE) announces its interest in receiving preapplications from potential applicants for research funding in the Energy Biosciences program area. The intent in asking for a preapplication is to save the time and effort of applicants in preparing and submitting a formal project application that may be inappropriate for the program. The preliminary screening of research ideas is aimed also at relieving some of the burden of the scientific community in reviewing an excessive number of research applications. The preapplication should consist of a two to three page concept paper about the research being contemplated within a potential formal application to the Energy Biosciences program. The concept paper should focus on the objectives of the planned research, its scientific goals and their significance, an outline of the approaches planned, and any other information that relates to

the planned research. No budget information or biographical data need be included; nor is an institutional endorsement necessary. The preapplication is an informal inquiry about the technical suitability of submitting a formal application for support of research ideas. A response indicating the appropriateness of submitting a formal application will be sent from the Division of Energy Biosciences office in a timely manner to allow for an adequate preparation period for a formal application.

DATES: For timely consideration, all preapplications should be received by February 24, 1993. However, earlier submissions will be gladly accepted. A response to timely preapplications will be communicated by April 20, 1993. The deadline for receipt of formal applications is June 9, 1993.

ADDRESSES: Preapplications referencing Program Notice 93-07 should be forwarded to: U.S. Department of Energy, Office of Basic Energy Sciences, ER-17, Division of Energy Biosciences, Washington, DC 20585, Attn: Program Notice 93-07. The following address must be used when submitting preapplications by U.S. Postal Service Express, any commercial mail delivery service, or when handcarried by the applicant: U.S. Department of Energy, Acquisition and Assistance Management Division, ER-64, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Snyder, Division of Energy Biosciences, Office of Basic Energy Sciences, ER-17, Washington, DC 20585 (301) 903-2873.

SUPPLEMENTARY INFORMATION: Before preparing a formal application, potential applicants should submit a brief preapplication in accordance with 10 CFR 600.10(d)(2), which consists of two to three pages of narrative describing research objectives. These will be reviewed relative to the scope and the research needs of the Energy Biosciences program. The Energy Biosciences program has the mission of generating fundamental biological information about plants and non-medical related microorganisms that can provide support for future energy related biotechnologies. The objective is to pursue basic biochemical, genetic and physiological investigations that may contribute toward providing alternate fuels, petroleum replacement products, energy conservation measures as well as other technologies related to DOE programs. Areas of interest include bioenergetic systems, including photosynthesis; control of plant growth

and development, including metabolic, genetic, and hormonal and ambient factor regulation, metabolic diversity, stress physiology and adaptation; genetic transmission and expression; plant-microbial interactions, plant cell wall structure and function; lignocellulose degradative mechanisms; mechanisms of fermentations, genetics of neglected microorganisms, energetics and membrane phenomena; thermophily (molecular basis of high temperature tolerance); microbial interactions; and one-carbon metabolism, which is the basis of biotransformations such as methanogenesis. The objective is to discern and understand basic mechanisms and principles.

Funds are expected to be available for new grant awards in FY 1994. The magnitude of these funds available and the number of awards which can be made will depend on the budget process. The principal purpose in using preapplications at this time is to reduce the expenditure of time and effort of all parties. Information about development and submission of applications, eligibility, limitations, evaluations and selection processes, and other policies and procedures may be found in 10 CFR part 605. Application kits for formal submissions and copies of 10 CFR part 605 are available from the same office listed under the ADDRESSES section of this Notice. Telephone requests may be made by calling (301) 903-2873. Instructions for preparation of an application are included in the application kit. The Catalog of Federal Domestic Assistance number for this program is 81.049.

Issued in Washington, DC, on December 14, 1992.

D.C. Mayhew,

Director, Office of Management, Office of Energy Research.

[FR Doc. 92-31593 Filed 12-29-92; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER93-259-000, et al.]

Northern States Power Co., et al. (Minnesota); Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Northern States Power Co. (Minnesota)

[Docket No. ER93-259-000]

December 18, 1992.

Take notice that on December 4, 1992, Northern States Power Company (Minnesota) (NSP) tendered for filing nine Municipal Interconnection and Interchange Agreements (Agreements) with nine municipal electric utilities (Cities) located in the State of Minnesota. The nine Cities are currently wholesale "requirements" customers of NSP under FERC rate schedules accepted for filing by the Commission.

The eight Cities and their existing FERC Rate Schedule No. are as follows:

Customer city	Rate schedule No.
City of Ada, Minnesota	390
City of Buffalo, Minnesota	423
City of East Grand Forks, Minnesota	387
City of Fairfax, Minnesota	400
City of Kasota, Minnesota	426
City of Kasson, Minnesota	427
City of Kenyon, Minnesota	394
City of Madelia, Minnesota	397
City of Melrose, Minnesota	401

The nine Agreements will replace the existing wholesale requirements sales or sales and transmission service agreements between NSP and the Cities with twenty year interconnection and interchange agreements containing market based contract rate sales service schedules for a period of up to thirteen years. The rates for such services were established in a competitive bidding process where NSP was one of several competitors proposing to serve all or a portion of NSP's nineteen existing municipal sales customers. NSP requests approval of the Agreements as market based rates.

Commission's notice requirements in order for the Agreement to be accepted for filing on the date requested.

Comment date: January 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. PacifiCorp

[Docket No. ER93-275-000]

December 18, 1992.

Take notice that PacifiCorp on December 14, 1992, tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, Amendment No. 3 (Amendment) to Contract No. 14-06-100-2433 between PacifiCorp and the United States Bureau of Reclamation.

The Amendment provides for the addition of two new Points of Delivery (POD) and clarifies the method for calculating losses. The new POD's reflection the addition of two 125 hp pumps by the Ochoco Irrigation District to serve their Ochoco Relift site. PacifiCorp seeks a waiver of the 60-day prior notice requirement to permit the

Amendment to become effective as of June 21, 1990.

Copies of this filing were supplied to the United States Bureau of Reclamation and the Public Utility Commission of Oregon.

Comment date: January 4, 1993, in accordance with standard Paragraph F at the end of this notice.

3. Orange and Rockland Utilities, Inc.

[Docket No. ER93-260-000]

December 18, 1992.

Take notice that on December 4, 1992 Orange and Rockland Utilities, Inc. (Orange and Rockland) tendered for filing a one year extension dated November 13, 1992, to an agreement between Orange and Rockland and New York Power Authority (Authority) for the sale of system capacity and/or energy by orange and Rockland to Authority.

Orange and Rockland requests waiver of the notice requirements of § 35.13 of the Commission's regulations so that the proposed extension can be made effective December 1, 1992 in accordance with the anticipated utilization by the parties.

Orange and Rockland states that a copy of its filing was served on New York Power Authority.

Comment date: January 4, 1993, in accordance with Standard paragraph E at the end of this notice.

4. Ogden Martin Systems of San Bernardino, Inc.

[Docket No. ER93-281-000]

December 18, 1992.

Take notice that on December 15, 1992, Ogden Martin Systems of San Bernardino, Inc. (Ogden-San Bernardino) tendered for filing a Notice of Termination of Rate Schedule FERC No. 1 of Ogden Martin Systems of San Bernardino, Inc. with the Federal Energy Regulatory Commission (FERC or the Commission).

On September 23, 1987, the Commission accepted for filing an electric power purchase agreement between Ogden-San Bernardino and Southern California Edison Company for the sale of capacity and energy from a proposed 42.5 MW solid waste, biomass-fueled small power production facility (the Facility) and designated the agreement as Rate Schedule FERC No. 1. Due to the decision of San Bernardino County, California to not proceed with the construction of the Facility, Ogden-San Bernardino will not sell capacity and energy to Southern California Edison Company pursuant to Rate Schedule FERC No. 1 and, accordingly,

seeks to terminate Rate Schedule FERC No. 1.

Comment date: January 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. The Montana Power Co.

[Docket No. ER93-206-000]
December 18, 1992.

Take notice that on December 15, 1992, The Montana Power Company (Montana) tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 an Amendment No. 1 to its original filing of an Interconnection Agreement between the Bonneville Power Administration and The Montana Power Company. This Amendment No. 1 provides additional information requested by Commission staff.

A copy of the filing was served upon the Bonneville Power Administration.

Comment date: January 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power & Light Co.

[Docket No. ER93-274-000]
December 18, 1992.

Take notice that Florida Power & Light Company (FPL) on December 14, 1992, tendered for filing an amendment entitled "Amendment Number Two to Contract for Interchange Service Between Florida Power & Light Company and Seminole Electric Cooperative, Inc." FPL requests that the amendment be made effective October 1, 1992.

Comment date: January 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Indiana Michigan Power Co. and Appalachian Power Co.

[Docket No. ER93-276-000]
December 18, 1992.

Take notice that on December 14, 1992, American Electric Power Service Corporation, on behalf of Indiana Michigan Power Company (I&M) and Appalachian Power Company (APCO), tendered for filing information regarding a change in the loss percentage used in the Transmission and Unit Power Supply Agreement, dated December 14, 1988 (1988 Agreement), among I&M, APCO, and Carolina Power & Light Company (CP&L). The 1988 Agreement has been previously designated as I&M's Rate Schedule FERC No. 77 and APCO's Rate Schedule FERC No. 24.

The 1988 Agreement provides that the parties may review and adjust the loss percentage biennially.

A copy of the filing was served upon the Indiana Utility Regulatory Commission, the Michigan Public Service Commission, the State Corporation Commission of Virginia, the Public Service Commission of West Virginia, the North Carolina Utilities Commission, the South Carolina Public Service Commission, and CP&L.

Comment date: January 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Long Island Lighting Co.

[Docket No. ER93-279-000]
December 18, 1992.

Take notice that Long Island Lighting Company (LILCO or Company) on December 15, 1992, tendered for filing a letter from LILCO to the New York Power Authority (NYPA) dated December 2, 1992.

The letter notified NYPA that LILCO is postponing termination of the existing LILCO/NYPA transmission agreements for delivering NYPA power to NYPA's municipal utility customers (LILCO-FERC Rate Schedule No. 32), industrial customers (LILCO-FERC Rate Schedule No. 34), and economic development customers (LILCO-FERC Rate Schedule No. 40). This action postpones the February 8, 1993 termination of the existing agreements and the accompanying rate schedules and rate schedule supplements (of which NYPA was previously notified) to provide the parties more time to attempt to reach agreement on replacement wheeling contracts.

LILCO requests that the Commission waive its notice requirements to allow the filing to become effective February 8, 1993.

Copies of this filing were served upon the New York State Public Service Commission, NYPA, the Villages of Freeport, Greenport and Rockville Centre, the Municipal Electric Utilities Association of New York State, U.S. Department of Energy—Brookhaven National Laboratory, Grumman Corporation, the Nassau County Public Utility Agency, and the Suffolk County Electrical Agency.

Comment date: January 4, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. The University of Texas System

[Docket No. QF93-8-000]
December 21, 1992.

On December 17, 1992, The University of Texas System (Applicant) tendered for filing a supplement to its filing in this docket.

The amendment provides additional information pertaining to the ownership structure and technical aspects of its cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

Comment date: January 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. The Cincinnati Gas & Electric Co.

[Docket No. ER92-804-000]
December 23, 1992.

Take notice that on December 16, 1992, The Cincinnati Gas & Electric Company (CG&E), in response to a request by the Commission Staff, submitted additional information concerning the charges and services to be provided under the Facility Agreement, dated as of May 1, 1992, between CG&E and Ohio Valley Electric Corporation (OVEC).

Copies of the filing of supplemental information were served on the Public Service Commission of Kentucky, the Ohio Public Utilities Commission and the Utility Regulatory Commission of Indiana.

Comment date: January 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. Western Area Power Administration

[Docket No. EF93-5091-000]
December 23, 1992.

Take notice that on December 15, 1992, the Assistant Secretary for Conservation and Renewable Energy of the Department of Energy, by Rate Order No. WAPA-58, did confirm and approve on an interim basis, to be effective on January 1, 1993, the Western Area Power Administration's (Western) ratesetting methodology, and Rate Schedule BCP-F4 for power service from the Boulder Canyon Project (BCP).

The existing rates do not yield sufficient revenue to satisfy the cost-recovery criteria through the cost evaluation period. However, the provisional rates will yield adequate revenue to satisfy these criteria.

The following is a comparison of the existing rates and the provisional rates:

COMPARISON OF EXISTING AND PROVISIONAL RATES

	Existing rate (FY 1992)	Provisional rate (FY 1993)*	Percent of change
Power Rate Schedule	BCP-F3	BCP-F4	
Composite Rate (mills/kWh)	10.21	14.56	43
Energy Rate (mills/kWh)	5.11	7.28	43
Capacity Rate (kW/month)	\$1.05	\$1.28	22

* The ratesetting methodology is in effect from January 1, 1993, through September 30, 1997. The rates will change annually.

The Administrator of Western certifies that the rates are consistent with applicable law and that they are the lowest possible rates consistent with sound business principles pursuant to the ratesetting methodology agreed to by the BCP contractors, Western, and the Bureau of Reclamation.

The Assistant Secretary for Conservation and Renewable Energy of the Department of Energy states the ratesetting methodology and the Rate Schedule BCP-F4 will be in effect on an interim basis and are submitted for confirmation and approval on a final basis for the period beginning January 1, 1993, and ending September 30, 1997, subject to subsequent annual rate adjustments approved by Western's Administrator as provided for by the ratesetting methodology; pursuant to authority vested in the Federal Energy Regulatory Commission (FERC) by Delegation Order No. 0204-108, as amended.

Comment date: January 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. New England Power Co.

Docket No. ER93-14-000
December 23, 1992.

Take notice that New England Power Company, on December 10, 1992, tendered for filing an amendment concerning the facilities Purchase and Sale Agreement with Littleton (Mass.) Electric Light and Water Department. According to NEP, the purpose of the amendment is to ensure additional notice to the Commission should the formula rate charged Littleton change in the future.

Comment date: January 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

13. Duke Power Co.

[Docket No. ER93-280-000]
December 23, 1992.

Take notice that on December 15, 1992, Duke Power Company (Duke Power) tendered for filing estimated billing information for calendar year 1992.

Comment date: January 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

14. PacifiCorp

[Docket No. ER93-278-000]
December 23, 1992.

Take notice that PacifiCorp on December 14, 1992, tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, the Agreement Concerning Use of Facilities, dated June 1, 1962, as amended (Agreement) between PacifiCorp and Portland General Electric Company.

The Agreement provides for the joint use of certain 230 kilovolt transmission facilities known as the Valley Line.

Copies of this filing were supplied to Portland General Electric and the Public Utility Commission of Oregon.

Comment date: January 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

15. Montaup Electric Co.

[Docket No. ER93-287-000]
December 23, 1992.

Take notice that on December 18, 1992, Montaup Electric Company filed "Notices of Cancellation" of the following rate schedules:

Designation	Other party/effective date/termination date
Rate Schedule FERC No. 28	New Bedford Gas and Edison Light Company/November 1, 1972/April 30, 1973
Rate Schedule FERC No. 32	New Bedford Gas and Edison Light Company/November 1, 1973/October 31, 1974
Rate Schedule FERC No. 38	Public Service Co. of New Hampshire/December 1, 1975/October 31, 1977
Rate Schedule FERC No. 39	Commonwealth Electric Co./December 1, 1975/April 30, 1978
Rate Schedule FERC No. 40	Middleborough Gas & Electric Dept./November 1, 1976/October 31, 1988
Rate Schedule FERC No. 52	Newport Electric Corp./November 1, 1977/October 31, 1981
Rate Schedule FERC No. 54	Middleborough Gas & Electric Dept./November 1, 1977/October 31, 1981
Rate Schedule FERC No. 61	Reading Municipal Light Dept./November 1, 1979/October 31, 1980
Rate Schedule FERC No. 65	Middleborough Gas & Electric Dept./November 1, 1981/October 31, 1988
Rate Schedule FERC No. 68	Fitchburg Gas & Electric Light Co./February 2, 1982/February 14, 1982
Rate Schedule FERC No. 69	Newport Electric Corp./May 1, 1982/October 31, 1986
Rate Schedule FERC No. 70	Taunton Municipal Lighting Plant/November 1, 1982/October 31, 1987
Rate Schedule FERC No. 71	Newport Electric Corp./November 1, 1982/October 31, 1988
Rate Schedule FERC No. 72	North Attleborough Electric Dept./November 1, 1982/October 31, 1988
Rate Schedule FERC No. 78	Hingham Municipal Lighting Plant/November 1, 1984/October 31, 1985
Rate Schedule FERC No. 80	MMWEC/May 1, 1986/October 31, 1986
Rate Schedule FERC No. 82	MMWEC/May 1, 1987/October 31, 1987
Rate Schedule FERC No. 92	Boston Edison Company/November 1, 1990/April 30, 1990
Rate Schedule FERC No. 93	Newport Electric Corp./November 1, 1990/December 31, 1990

Comment date: January 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

16. PacifiCorp

[Docket No. ER93-288-000]
December 23, 1992.

Take notice that PacifiCorp, on December 21, 1992, tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, the calculation of the

annual facilities charge pursuant to Section 2.9 of the Agreement for Mitigation of Major Loop Flow among PacifiCorp, Pacific Gas and Electric Company (PG&E) and Southern California Edison Company (SCE), PacifiCorp Rate Schedule FERC No. 298.

Copies of this filing were supplied to PG&E, SCE, the Public Utility Commission of Oregon, the Utah Public Service Commission and the Public Utilities Commission of the State of California.

Comment date: January 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

17. Red Top Cogeneration Project, L.P.

[Docket No. EL93-9-000]

December 23, 1992.

Take notice that on December 3, 1993, Red Top Cogeneration Project, L.P. (Red Top) tendered for filing a request for a declaratory order. Red Top requests that the order extend the interpretation of natural gas classified as "waste" gas to cogeneration facilities.

Comment date: January 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

18. New England Power Co.

[Docket No. ER92-113-002]

December 23, 1992.

Take notice that on December 14, 1992, New England Power Company (NEP) tendered for filing additional information relative to its compliance refund report in Docket No. ER92-113-000.

Comment date: January 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

19. Wisconsin Electric Power Co.

[Docket No. ER93-283-000]

December 23, 1992.

Take notice that on December 18, 1992, Wisconsin Electric Power Company (WEPCO) tendered for filing a response to the Director of the Office of Electric Power Regulation's letter dated February 2, 1992.

Comment date: January 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

20. Boston Edison Co.

[Docket No. ER93-266-000]

December 23, 1992.

Take notice that on November 23, 1992, Boston Edison Company (Boston Edison) tendered for filing pursuant to appendix C, Article II of the 1987 Settlement Agreement between Boston Edison, Cambridge Electric Light Company and the Town of Belmont, for

information purposes only, the 1991 true up to actual for the substation 509 Agreement (FPC Rate 101).

Comment date: January 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

21. PacifiCorp

[Docket No. ER93-25-000]

December 23, 1992.

Take notice that on December 14, 1992, PacifiCorp tendered for filing an amendment in the above-referenced docket.

Comment date: January 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

22. Green Mountain Power Corp.

[Docket No. ER92-803-000]

December 23, 1992.

Take notice that on December 14, 1992, Green Mountain Power Corporation (Green Mountain) tendered for filing an amendment in the above-referenced docket.

Comment date: January 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

23. Duke Power Co.

[Docket No. ER93-284-000]

December 23, 1992.

Take notice that on December 18, 1992, Duke Power Company (Duke) filed a Restated Interchange Contract (Contract) between South Carolina Electric & Gas Company (SCE&G) and Duke Power Company. The Contract will supersede the Contract dated 1956, as amended, currently in effect between Duke and SCE&G. The Contract provides for interconnected operations between the two systems as well as transactions involving Spinning Reserve, Short Term Power, Limited Term Power, Economy Interchange, and Other Energy.

Comment date: January 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

24. The Washington Water Power Co.

[Docket No. ER93-282-000]

December 23, 1992.

Take notice that on December 17, 1992, The Washington Water Power Company tendered for filing with the Federal Energy Regulatory Commission, pursuant to 18 CFR part 35, proposed changes to its FERC electric service tariffs, Schedule 61, for the purpose of deleting Citizens Utilities Company as a customer. Washington Water Power requests waiver of the Commission's 60-day filing requirement.

A copy of the filing was mailed to Citizens Utilities Company.

Comment date: January 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

25. The Washington Water Power Co.

[Docket No. ER93-127-000]

December 23, 1992.

Take notice that on December 17, 1992, The Washington Water Power Company (WWP) tendered for filing with the Federal Energy Regulatory Commission A Notice of Termination of Rate Schedule 40-C-49.

A copy of the filing was mailed to Bonneville Power Administration.

Comment date: January 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

26. Commonwealth Electric Co.

[Docket No. ER93-285-000]

December 23, 1992.

Take notice that on December 18, 1992, Commonwealth Edison Company (Commonwealth) filed, pursuant to section 205 of the Federal Power Act and the implementing provisions of § 35.13 of the Commission's Regulations, a proposed change in rate under its currently effective Rate Schedule FERC No. 6.

Commonwealth states that said change in rate under Commonwealth's Rate Schedule FERC No. 6 has been computed according to the provisions of section 6(b) of its Rate Schedule FERC No. 6. Such change is proposed to become effective January 1, 1992, thereby superseding the 23 kV wheeling Rate in effect during calendar 1991. Commonwealth has requested that the Commission's notice requirements be waived pursuant to § 35.11 of the Commission's Regulations in order to allow the tendered rate change to become effective as of January 1, 1992.

Copies of this filing have been served upon Boston Edison Company and the Massachusetts Department of Public Utilities.

Comment date: January 7, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the

comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 92-31719 Filed 12-29-92; 8:45 am]

BILLING CODE 5717-01-M

[Project Nos. 1933-005, et al.]

Hydroelectric Applications [Southern California Edison Company, et al.]; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Relocation of Transmission Line.

b. *Project No.:* 1933-005.

c. *Date Filed:* 11/19/92.

d. *Applicant:* Southern California Edison Company.

e. *Name of Project:* Santa Ana River No. 1 and No. 2 Project.

f. *Location:* Near the mouth of the Santa Ana River Canyon, in San Bernardino County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Bryant C. Danner, Vice President and General Counsel, Southern California Edison Company, P.O. Box 800, 2244 Walnut Grove Avenue, Rosemead, CA 91770. (818) 302-1920.

i. *FERC Contact:* Mohamed Fayyad, (202) 219-2665.

j. *Comment Date:* January 28, 1993.

k. *Description of Amendment:* Licensee proposes to relocate the project's transmission line to an area above the high-water mark behind the Seven Oaks Dam. The proposed relocation involves:

(1) Removing existing towers and conductors,

(2) constructing helicopter landing facilities, and

(3) constructing new towers and conductors.

l. *This notice also consists of the following standard paragraphs:* B, C, and D2.

2 a. *Type of Application:* Application for non-project use of project lands.

b. *Project No.:* 2183-009.

c. *Date Filed:* September 3, 1992.

d. *Applicant:* Grand River Dam Authority.

e. *Name of Project:* Markham Ferry Project.

f. *Location:* Salina, Oklahoma.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Ron Coker, General Manager/CEO, Grand River Dam Authority, P.O. Box 409, Vinita, OK 74301-0409. (918) 256-5545.

i. *FERC Contact:* John K. Hannula, (202) 219-1040.

j. *Comment Date:* January 28, 1993.

k. *Description of Project:* The Grand River Dam Authority, licensee for the Markham Ferry Project, filed an application to convey project lands to the Town of Salina, Oklahoma. The lands are located in the SE1/4 of the SW1/4 of Section 15, T. 21 N., R. 20 E. The Town of Salina will construct, operate, and maintain a water and wastewater treatment plant and a backwash storage facility at that location.

l. This notice succeeds a November 13, 1992 Public Notice filed under the wrong project name and number (Pensacola Dam/Grand Lake Project, No. 1494-013) for the same non-project use of project lands.

m. *This notice also consists of the following standard paragraphs:* B, C, and D2.

3 a. *Type of Application:* New License.

b. *Project No.:* 2325-007.

c. *Date Filed:* November 20, 1991.

d. *Applicant:* Central Maine Power Co.

e. *Name of Project:* Weston Project.

f. *Location:* On the Kennebec River, Somerset County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Gerald C. Poulin, Central Maine Power Co., Edison Drive, Augusta, ME 04336. (207) 623-3521.

i. *FERC Contact:* Michael Dees (202) 219-2807.

j. *Deadline Date:* February 16, 1993.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached standard paragraph D9.

l. *Description of Project:* The project structures consist of a dam, a powerhouse, an impoundment, and appurtenant facilities. For the existing condition, the Project has a total generator capacity of 12.77 megawatts (MW) and an average annual generation of about 81,900 megawatt-hours (MWH). The Applicant is proposing to replace the existing turbine runners with more efficient runners. Due to this proposal the average annual generation would increase to 93,100 MWH. In detail, the

existing and proposed project is described as follows:

(1) A concrete gravity dam, totaling about 921 feet long, consisting of a North Channel Dam and a South Channel Dam:

North Channel Dam:

The broad V-shaped north channel dam, with a maximum height of 38 feet, consist of:

(a) a 75-foot-long concrete retaining wall, with a top elevation of 167.2 feet (USGS); (b) a 23-foot-long non-overflow section, with a top elevation of 167.0 feet (USGS); (c) a 244-foot-long stanchion section, with five bays, each 10.5 feet high, having a sill elevation of 145.0 feet (USGS); (d) a 170-foot-long hinged flashboard section, that are 7 feet high, with a sill elevation of 149.0 feet (USGS); (e) a 93-foot-long gate section, having two Taintor gates, each measuring 28 feet wide by 16 feet high, with a sill elevation of 140.0 feet (USGS); and (f) an earth-filled abutment with a concrete core wall.

South Channel Dam:

The South Channel Dam, with a maximum height of 51 feet, consists of:

(a) A 125-foot-long intake section, with four intake bays; (b) a 33-foot-long concrete spillway section, with a permanent crest of 154.0 feet (USGS), topped by 2-foot-high stoplogs; (c) a 24-foot-long sluice section, with a permanent top elevation of 142.0 feet (USGS), topped with a 14-foot-high Taintor flow controlled gate, extending about 69.5 feet downstream; (d) a 188-foot-long stanchion section, with five bays, each about 21 feet high, topped with about 11-foot-high of stoplogs from a sill elevation ranging 143.0 feet to 145.0 feet (USGS); and (e) a 22-foot-long concrete gravity non-overflow section, with a top elevation of 166.0 feet (USGS).

(2) A concrete, masonry, and steel integral powerhouse, about 90 feet high by 41 feet wide by 188 feet long, equipped with four vertical Francis electric generating units having (a) the total existing rated capacity of 12,770 kilowatts (kW), a maximum hydraulic capacity of 6,075 cubic feet per second (cfs), an average annual generation of 81,900 MWH; and (b) the total proposed rated capacity of 12,770 kW, a maximum hydraulic capacity of 7,255 cfs, an average annual generation of 93,100 MWH;

(3) An impoundment, about 12.4 miles long, having (a) a surface area of about 930 acres (AC); (b) a gross storage capacity of 18,600 acre-feet (AF), but a negligible useable storage capacity; (c) a normal pool headwater elevation of 156.0 feet (USGS); and (d) a normal

tailwater elevation of 122.5 feet (USGS); and

(4) Appurtenant facilities.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act.

m. *Purpose of Project:* The purpose of the project is to generate electric energy for sale to applicant's customers.

n. *This notice also consists of the following standard paragraphs:* A4 and D9.

o. *Available Location of Application:*

A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at Central Maine Power Co., Edison Drive, Augusta, ME 04336.

4 a. *Type of Application:* New License.

b. *Project Nos.:* 2442-001.

c. *Date Filed:* December 30, 1991.

d. *Applicant:* City of Watertown, New York.

e. *Name of Project:* Watertown Project.

f. *Location:* On the Black River, Jefferson County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Karl R. Amylon, Watertown Municipal Building, 245 Washington Street, Watertown, NY 13601-3380. (315) 785-7730.

i. *FERC Contact:* Michael Dees (202) 219-2807.

j. *Deadline Date:* February 23, 1993.

k. *Status of Environmental Analysis:* This application has been accepted for filing but is not ready for environmental analysis at this time—see attached standard paragraph E.

l. *Description of Project:* The existing Watertown Project's principal features consist of two dams (the Diversion Dam and the Delano Island Dam), a headgate, a power canal and forebay, a powerhouse, an impoundment, and appurtenant facilities. In addition, there is a designated wetland area of 17 acres within the project's boundary, located just upstream of the Diversion Dam along the left shoreline of the forebay.

The City of Watertown is proposing to increase the total installed capacity by replacing all existing electrical and mechanical equipment with new generating units. The existing project has a total nameplate capacity of 5.4 megawatts (MW) and an average annual generation of about 28,000 megawatt-

hours (MWH). The proposed project would have a total nameplate capacity of 10.8 MW and an average annual generation of about 47,900 MWH.

In detail, the existing and proposed project is described as follows:

(1) The concrete gravity Diversion Dam, totaling about 650 feet long, consisting of (a) an ogee section, 590 feet long by 13.5 feet high, with a crest elevation of 500.1 feet mean sea level (msl), and (b) a small minimum flow ogee section, 60 feet long by 11 feet high, with a crest elevation of 496.15 feet msl;

(2) The concrete gravity Delano Island Dam, totaling 200 feet long, with a maximum height of 12 feet and a crest elevation of 500.1 feet msl;

(3) A concrete headgate, 200 feet long by 18.5 feet high, with twenty-five vertical steel gates, each 25 feet wide by 8 feet high, with a sill elevation of 493.0 feet msl;

(4) An excavated power canal, totaling 1,050 feet long, with varying widths of 53 to 180 feet, consisting of (a) a 175-foot-long concrete gravity ogee section which has a 3-foot-wide by 4-foot-high mudgate and a trash chute; (b) a 200-foot-long by 130-foot-wide forebay, which has an existing 60 degree angled, 150-foot-long trashrack;

(5) A concrete and brick masonry powerhouse, about 49 feet wide by 115 feet long, equipped with three existing generating units, with (a) a rated capacity of 1,800 kilowatts (kW) per unit; (b) a hydraulic capacity range of 400 to 3,000 cubic feet per second (cfs); and (c) an average annual generation of 28,000 MWH; the three proposed replacement units would have (a) a rated capacity of 3,600 kW per unit; (b) a hydraulic capacity range of 400 to 6,000 cfs; and (c) an average annual generation of 47,900 MWH;

(6) An impoundment, 3.5 miles long, having (a) a surface area of about 190 acres (AC); (b) a gross storage capacity of 2,000 acre-feet (AF); (c) a negligible usable storage capacity; (d) a normal headwater elevation of 500.1 feet msl; (e) a normal tailwater elevation of 473.0 feet msl; and (f) a designated wetland area of 17 AC;

(7) An existing 100-foot-long, 2.3 kilovolt (kv) primary transmission line; and

(8) Appurtenant facilities.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act.

m. *Purpose of Project:* The purpose of the project is to provide electric energy to several of applicant's municipal accounts and for sale to Niagara Mohawk Power Corporation.

n. *This notice also consists of the following standard paragraphs:* B1 and E.

o. *Available Location of Application:*

A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC, 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at Watertown Municipal Building, 245 Washington Street, Watertown, NY 13601-3380, (315) 785-7730.

5 a. *Type of Application:* New License.

b. *Project No.:* 2538-001.

c. *Date Filed:* December 23, 1991.

d. *Applicant:* Beebe Island Corporation.

e. *Name of Project:* Beebe Island Project.

f. *Location:* On the Black River, Jefferson County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. David Bristol, Beebe Island Corporation, 100 Clinton Square, suite 400, Syracuse, NY 13202-1049. 315-474-2881.

i. *FERC Contact:* Michael Dees (202) 219-2807.

j. *Deadline Date:* February 11, 1993.

k. *Status of Environmental Analysis:* This application has been accepted for filing but is not ready for environmental analysis at this time—see attached standard paragraph E.

l. *Description of Project:* The Beebe Island Corporation (BIC) proposes to increase the existing installed capacity by upgrading the existing generators and adding a new unit to the existing northern flume structure. BIC also proposes to increase the effective head of the project by replacing the existing wooden 3-foot-high flashboards with an 8-foot-high rubber dam. The proposal would increase the Beebe Island hydroelectric plant from a total capacity of 8 megawatts (MW) to 13.6 MW, and the average annual generation from 38.7 megawatt hours (MWh) to 63.9 MWh.

In detail, the existing and proposed project is described as

(1) An existing 18-foot-high by 266-foot-long, U-shaped concrete gravity main dam, with a permanent crest elevation of 428.0 feet (USGS), topped with existing 3-foot-high wooden flashboards, which would be replaced with an 8-foot-high rubber pneumatic dam;

(2) A 50-foot-long by 15-foot-high, concrete-capped stone auxiliary non-overflow dam, equipped with an 8-foot-by-15-foot skimmer gate;

(3) An existing 1,900-foot-long impoundment, with normal headpond elevation of 431.0 feet (USGS), surface area of 20 acres (AC), and gross storage capacity of 60 acre-feet (AF), which would be enlarged to a 2,300-foot-long impoundment, with normal headpond elevation of 436.0 feet (USGS), surface area of 21.5 AC, and gross storage capacity of 172 AF;

(4) An existing 47-foot-wide by 82-foot-long powerhouse equipped with two vertical generating units, each rated at 4,000 kilowatts (kW), a design head of 32 feet, and a hydraulic capacity of 1,800 cubic feet per second (cfs), with the generators being upgraded to a total capacity of 9,900 kW (Unit 1: 4,600 kW, Unit 2: 5,300 kW);

(5) A proposed 30-foot-wide by 60-foot-long powerhouse, equipped with one horizontal generating unit with a rated capacity of 3,700 kW, a design head of 36.1 feet, and a hydraulic capacity of 1,300 cfs;

(6) An existing tailrace with a normal surface elevation of 397.4 feet (USGS);

(7) An existing 300-foot-long, 4.8-kilovolt (kV) primary transmission line; and

(8) Appurtenant facilities.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act.

m. Purpose of Project: The purpose of the project is to provide electric energy for sale to Niagara Mohawk Power Corporation to help meet Niagara's load demand.

n. This notice also consists of the following standard paragraphs: B1 and E.

o. Available Location of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at Beebe Island Corporation, 100 Clinton Square, suite 400, Syracuse, NY, 13202-1049, 315-474-2881.

6 a. Type of Application: Subsequent License (see 18 CFR 16.2(e) for definition).

b. Project No.: 2643-001.

c. Date Filed: December 24, 1991.

d. Applicant: PacifiCorp Electric Operations.

e. Name of Project: Bend Hydroelectric Project.

f. Location: On Deschutes River in Deschutes County, Oregon.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Stanley A. deSousa, Director, Hydro Resources, PacifiCorp Electric Operations, 920 S.W. Sixth Avenue, Portland, Oregon 97204, (503) 464-5343.

i. FERC Contact: Mr. Surender M. Yepuri, P.E. (202) 219-2847.

j. Deadline Date: February 5, 1993.

k. Status of Environmental Analysis: This application is ready for an environmental analysis at this time—see attached paragraph D10.

l. Description of Project: The project as proposed for licensing consists of:

(1) The 14-foot-high, 252-foot-long rock filled timber crib dam impounding the 40-acre Mirror Pond Reservoir;

(2) a 42-inch-high inflatable rubber crest control structure which will replace the existing stoplog sections;

(3) the 56-foot-wide, 59-foot-long, 25-foot-high powerhouse containing three turbine generator units with a total installed capacity of 1.1 MW; and

(4) other appurtenant structures. The average annual generation is 5.28 GWh. The applicant is proposing rehabilitation of certain project works without modifying the existing project.

m. Purpose of Project: Power generated at the project is delivered to customers within the applicant's service area.

n. This notice also consists of the following standard paragraphs: A4 and D10.

7 a. Type of Application: Surrender of Exemption (5 MW or Less).

b. Project No.: 7405-005.

c. Date Filed: July 13, 1992.

d. Applicant: Joanne Marie and Garie Price.

e. Name of Project: Upper Indian Creek Project.

f. Location: On Upper Indian Creek in Union County, Oregon.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contacts: Joanne Marie and Garie Price, 63974 Mt. Glen Road, La Grande, OR 97850, (503) 963-4746.

i. FERC Contact: Ms. Deborah Frazier-Stutely, (202) 219-2842.

j. Comment Date: January 21, 1993.

k. Description of Proposed Action: The existing project for which the exemption is being surrendered consists of:

(1) An intake/diversion consisting of a 150-foot-long channel, and a 48-inch-diameter, 400-foot-long corrugated pipe;

(2) A 20-inch-diameter, 5,000-foot-long steel penstock;

(3) A powerhouse containing a single generating unit with a rated capacity of 100 kW;

(4) A 24-kV, 8,000-foot-long transmission line; and

(5) Related facilities.

The exemptee is requesting surrender of its exemption because the exemptee is unable to secure a purchaser for the power. The project is presently not in operation.

l. This notice also consists of the following standard paragraphs: B, C.

8 a. Type of Application: Major License (Less than 5MW).

b. Project No.: 10772-001.

c. Date Filed: June 18, 1992.

d. Applicant: Hydro-Power Electric of Nevada, Inc.

e. Name of Project: Boulder Rapids Water Power Project.

f. Location: On the Snake River at river mile 597.5 in Twin Falls and Gooding Counties Idaho, near the town of Buhl. T.9S., R.15E., section 9, Boise Meridian.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact:

Mr. Robert Jones, Hydro-Power Electric of Nevada, Inc., 1766 Addison Avenue East, Twin Falls, ID 83301, (208) 733-0404.

Carl L. Myers, PE, Myers Engineering Company, P.A., 750 Warm Springs Avenue, Boise, ID 83712, (208) 336-1425.

Mr. Lee Sherline, Consultant, 207 Park Avenue, Suite 101, Falls Church, VA 22046-4312, (703) 536-5401.

Mr. Larry Falkner, L.B. Industries, Inc., 1401 Shoreline Drive, P.O. Box 2797, Boise, ID 83701, (208) 345-7515.

i. FERC Contact: Ms. Deborah Frazier-Stutely, (202) 219-2842.

j. Comment Date: February 19, 1993.

k. Description of Project: The proposed run-of-river project would consist of:

(1) A 12-foot deep wetland peninsula extending 320 feet into the north side of the river, directly across from the canal intake, to aid in the diversion of river flow into;

(2) An earth-lined side channel intake on the south side of river;

(3) A 14-foot-deep, 2,331-foot-long partially lined opened canal with a bottom width of 50 feet and a normal water surface of 2,966 feet msl;

(4) A 50-foot-high, 39-foot-long, 92-foot-wide reinforced concrete powerhouse containing trashracks, headgate, an entry chamber and two generating units with a combined installed capacity of 4,900 kW, with a gross head of 24 feet;

(5) A 20-foot-wide spillway near powerhouse;

(6) A 100-foot-wide concrete rip-rap rectangular tailrace channel;

(7) A switchyard;

(8) A 138-kV, 2,200-foot-long transmission line tying into the Idaho Power Company Upper Salmon substation; and

(9) Related facilities.

The project would generate approximately 25.3 GWh of energy annually.

The applicant also proposes to provide public access signs, a picnic area with parking, handicapped fishing access, and interpretive/nature trails as recreational enhancement at the project site.

l. Purpose of Project: The applicant proposes to sell the project power to Idaho Power Company or another utility in the region.

n. This notice also consists of the following standard paragraphs: A2, A9, B1, D8.

o. Available Locations of Applications: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at the applicant's office (see item (h) above).

9 a. Type of Application: Major License (less than 5MW).

b. Project No.: 10849-001.

c. Date Filed: July 9, 1992.

d. Applicant: Hydro-Power Electric of Nevada, Inc.

e. Name of Project: Empire Water Power Project.

f. Location: On the Snake River at river mile 594.5 in Gooding County Idaho, near the town of Buhl. T.9S., R.14E., sec. 1, Boise Meridian.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact:

Mr. Robert Jones, Hydro-Power Electric of Nevada, Inc., 1766 Addison Avenue East, Twin Falls, ID 83301. (208) 733-0404.

Carl L. Myers, PE, Myers Engineering Company, P.A., 750 Warm Springs Avenue, Boise, ID 83712. (208) 336-1425.

Mr. Lee Sherline, Consultant., 207 Park Avenue, Suite 101, Falls Church, VA 22046-4312. (703) 536-5401.

L.B. Industries, Inc., c/o Larry Falkner, 1401 Shoreline Drive, P.O. Box 2797, Boise, ID 83701. (208) 345-7515.

i. FERC Contact: Ms. Deborah Fraizer-Stutely (202) 219-2842.

j. Comment Date: February 19, 1993.

k. Description of Project: The proposed run-of-river project would consist of:

(1) an earth-lined side channel intake, upstream from Buhl-Wendell bridge;

(2) A 640-foot-long, 20-foot-deep unlined open canal, with a bottom width of 35 feet;

(3) A 19-foot-high, 35-foot-wide, 150-foot-long reinforced concrete box culvert road under-crossing;

(4) A 19-foot-deep, 1,050-foot-long lined open canal, with a bottom width of 35 feet;

(5) A 39-foot-long, 50-foot-high, 98-foot-wide reinforced concrete powerhouse with trashrack, headgate, entry chamber, and two generating units with a combined installed capacity of 3,100 kW, operating under a gross head of 18 feet;

(6) A spillway near the powerhouse;

(7) A switchyard;

(8) A 46-kV, 600-foot-long transmission line tying into an existing Idaho Power Company system;

(9) A 20-foot-wide, 1,300 foot-long access road to the powerhouse; and (10) related facilities.

The project would generate approximately 19 MWh of energy annually.

The applicant also proposes to provide public access signs, and foot paths for fishing access as recreational enhancement at the project site.

l. Purpose of Project: The applicant proposes to sell the project power to Idaho Power Company or another utility in the region.

n. This notice also consists of the following standard paragraphs: A2, A9, B1, D8.

o. Available Locations of Applications: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at the applicant's office (see item (h) above).

10 a. Type of Application: Minor License.

b. Project No.: 10881-001.

c. Date Filed: April 24, 1992.

d. Applicant: Daniel Nelson Evans, Jr.

e. Name of Project: Whitney Mills.

f. Location: On the Lawson's Fork Creek, Spartanburg County, South Carolina.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)-825(r).

h. Applicant Contact: Daniel Nelson Evans, Jr., 212 Range Road, Kings Mountain, NC 28086. (704) 739-9710.

i. FERC Contact: Charles T. Raabe (tag) (202) 219-2811.

j. Deadline Date: February 22, 1993.

k. Status of Environmental Analysis: This application is accepted for filing but is not ready for environmental analysis at this time—see attached paragraph D7.

l. Description: The existing inoperative project would consist of:
(1) A dam with a length of 296 feet and a maximum height of about 23 feet;

(2) A reservoir with a surface area of about 2 to 4 acres, a maximum capacity of 30-acre feet, and a normal water surface elevation of 703 feet mean sea level (msl);

(3) Two buried steel penstocks, each with a length of 60 feet and a diameter of 4 feet;

(4) A brick and concrete powerhouse with dimensions of 14.5 feet by 26.5 feet containing a single turbine-generator unit rated at 225 kilowatts (kW) operating at 26 feet of head;

(5) A tailrace protected by a 30-foot-long concrete tailrace wall;

(6) A new 65-foot-long, 12.5-kilovolt (kV) transmission line; and

(7) Appurtenant equipment and facilities.

The dam contains two low-level 3- by 5-foot vertical slide gates and has a 231-foot-long uncontrolled overflow spillway with a crest elevation of 700 feet msl surmounted by 3-foot-high flashboards. Applicant estimates that the average annual energy production would be 826,424 kWh. Energy produced would be sold to Duke Power Company. The existing facilities are owned by Ernest W. Miller. The application was filed during the term of Applicant's preliminary permit.

m. This notice also consists of the following standard paragraphs: A2, A9, B1, and D7.

n. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at 212 Range Road, Kings Mountain, NC 28086 and at the Spartanburg County Public Library, 333 South Pine Street, Spartanburg, SC.

11 a. Type of Application: Preliminary Permit.

b. Project No.: 11325-000.

c. Date Filed: September 14, 1992.

d. Applicant: Cherry Creek Hydro Associates.

e. Name of Project: Cherry Creek.

f. Location: On Cherry Creek, in Cache County, Utah. Township 14 N, Range 2 E, Section 29.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Gene Deveraux, 1190 North Spring Place, P.O. Box 870, Springville, UT 84663-0870. (801) 489-0089.

i. FERC Contact: Michael Spencer at (202) 219-2846.

j. Comment Date: February 11, 1993.

k. Description of Project: The proposed project would consist of:

- (1) An existing concrete drop inlet structure;
- (2) 12-inch-diameter, 6,900-foot-long penstock;
- (3) A powerhouse containing a generating unit with a capacity of 350 kW and an average generation of 1,527,900 kWh; and
- (4) A 3,800-foot-long transmission line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be \$35,000.

l. *Purpose of Project:* Project power would be sold.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

12 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11326-000.

c. *Date Filed:* September 14, 1992.

d. *Applicant:* Colton Springs Hydro Associates.

e. *Name of Project:* Colton Springs.

f. *Location:* On Colton Springs, a tributary to the Price River, in Carbon County, Utah. Township 11 S, Range 9 E.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Gene Deveraux, 1190 North Spring Place, P.O. Box 870, Springville, UT 84663-0870. (801) 489-0089.

i. *FERC Contact:* Michael Spencer at (202) 219-2846.

j. *Comment Date:* February 11, 1993.

k. *Description of Project:* The proposed project would consist of:

- (1) An existing concrete drop inlet structure;
- (2) 12-inch-diameter, 6-mile-long penstock;

(3) A powerhouse containing a generating unit with a capacity of 344 kW and an average generation of 3,192,300 kWh; and

(4) A 200-foot-long transmission line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be \$35,000.

l. *Purpose of Project:* Project power would be sold.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

13 a. *Type of Applicant:* Preliminary Permit.

b. *Project No.:* 11327-000.

c. *Date Filed:* September 14, 1992.

d. *Applicant:* Leamington/Rocky Ford Hydro Associates.

e. *Name of Project:* Leamington/Rocky Ford.

f. *Location:* At the existing Utah Canal Diversion Structure, on the Sevier River, in Juab County, Utah. Township 14 S Range 3 W, Section 28.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Gene Deveraux, 1190 North Spring Place, P.O. Box 870, Springville, UT 84663-0870. (801) 489-0089.

i. *FERC Contact:* Michael Spencer at (202) 219-2846.

j. *Comment Date:* February 11, 1993.

k. *Description of Project:* The proposed project would consist of:

- (1) The existing 12-foot-high Utah Canal earthen dam;
- (2) A 120-inch-diameter, 1,050-foot-long penstock;
- (3) A powerhouse containing two generating units with a combined capacity of 1,300 kW and an average annual generation of 3,806,800 kWh; and
- (4) A 1,500-foot-long transmission line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be \$35,000.

l. *Purpose of Project:* Project power would be sold.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

14 a. *Type of Applicant:* Preliminary Permit.

b. *Project No.:* 11328-000.

c. *Date Filed:* September 14, 1992.

d. *Applicant:* Sevier Bridge Hydro Associates.

e. *Name of Project:* Sevier Bridge.

f. *Location:* At the Sevier Bridge dam, on the Sevier River, in Juab County, Utah.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Gene Deveraux, 1190 North Spring Place, P.O. Box 870, Springville, UT 84663-0870. (801) 489-0089.

i. *FERC Contact:* Michael Spencer at (202) 219-2846.

j. *Comment Date:* February 11, 1993.

k. *Description of Project:* The proposed project would consist of:

- (1) The existing 90-foot-high Sevier Bridge dam;
- (2) The existing reservoir with a surface area of 10,905 acres.
- (3) A 120-inch-diameter, 450-foot-long penstock;
- (4) A powerhouse containing two generating units with a combined capacity of 4,500 kW and an average annual generation of 9,960,390 kWh; and
- (5) A 200-yard-long transmission line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be \$35,000.

l. *Purpose of Project:* Project power would be sold.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

15 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11330-000.

c. *Date Filed:* September 14, 1992.

d. *Applicant:* South Fork Hydro Associates.

e. *Name of Project:* South Fork Power Project.

f. *Location:* On the South Fork Provo River, in Utah County, Utah. Township 5 S, Range 3 E, Section 26.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Gene Deveraux, 1190 North Spring Place, P.O. Box 870, Springville, UT 84663-0870. (801) 489-0089.

i. *FERC Contact:* Michael Spencer at (202) 219-2846.

j. *Comment Date:* February 11, 1993.

k. *Description of Project:* The proposed project would consist of:

- (1) Six existing concrete drop inlet structures at springs which are tributaries to the South Fork Provo River;
- (2) A 24-inch-diameter, 14,310-foot-long penstock combining the flows from the inlets;
- (3) A powerhouse containing a generating unit with a capacity of 698 kW and an average annual generation of 6,920,000 kWh; and
- (4) A 200-yard-long transmission line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be \$35,000.

l. *Purpose of Project:* Project power would be sold.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

16 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11331-000.

c. *Date Filed:* September 14, 1992.

d. *Applicant:* Upper Falls Hydro Associates.

e. *Name of Project:* Upper Falls.

f. *Location:* On Upper Falls Creek, in Utah County, Utah. Township 5 S Range 3 E, Section 34.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Gene Deveraux, 1190 North Spring Place, P.O. Box 870, Springville, UT 84663-0870. (801) 489-0089.

i. *FERC Contact*: Michael Spencer at (202) 219-2846.

j. *Comment Date*: February 11, 1993.

k. *Description of Project*: The proposed project would consist of:

- (1) The existing 3.5-foot-high diversion wall;
- (2) A 10-inch-diameter, 1,000-foot-long penstock;
- (3) A powerhouse containing a generating unit with a capacity of 87 kW and an average annual generation of 603,100 kWh; and
- (4) A 200-yard-long transmission line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be \$35,000.

l. *Purpose of Project*: Project power would be sold.

m. *This notice also consists of the following standard paragraphs*: A5, A7, A9, A10, B, C, and D2.

17 a. *Type of Application*: Preliminary Permit.

b. *Project No.*: 11335-000.

c. *Date Filed*: September 17, 1992.

d. *Applicant*: Conco Western Stone Co.

e. *Name of Project*: Conhydro.

f. *Location*: Near the Fox River, in the Village of North Aurora, Kane County, Illinois.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791 (a)-825(r).

h. *Applicant Contact*: Mr. William J. Bauer, P.E., 905 West Hillgrove Avenue, La Grange, IL 60525. (708) 352-9445.

i. *FERC Contact*: Charles T. Raabe (dt) (202) 219-2811.

j. *Comment Date*: February 4, 1993.

k. *Description of Project*: The proposed pumped-storage project would consist of: (1) An existing open-pit quarry modified to form an upper reservoir having water surface elevation about 720 feet MSL; (2) a 20-foot-diameter, 5,000-foot-deep vertical shaft; (3) an underground powerhouse containing 15 turbine/pump units each rated at 160-MW; (4) a mined lower reservoir having about 4,000 acre-foot storage capacity; (5) a 345-kV substation; (6) a short 345-kV transmission line; and (7) appurtenant facilities. Applicant estimates that the cost of the studies under the permit would be \$6,000,000. Project energy would be sold to/purchased from Commonwealth Edison Company. The existing quarry is owned by the Applicant. The initial filling of the project reservoir would be with water from the Fox River. Applicant proposes to perform on-site exploratory drilling during the term of the permit.

l. *This notice also consists of the following standard paragraphs*: A5, A7, A9, A10, B, C, & D2.

a. *Type of Application*: Preliminary Permit.

b. *Project No.*: 11359-000.

c. *Date Filed*: October 27, 1992.

d. *Applicant*: Northrop Engineering Corporation.

e. *Name of Project*: Murphy Hydroelectric Project.

f. *Location*: On the Connecticut River, in the town of Pittsburg, Coos County, New Hampshire.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791 (a)-825(r).

h. *Applicant Contact*: Fred J. Ayer, Northrop, Devine & Tarbell, Inc., 500 Washington Avenue, Portland, Maine 04103.

i. *FERC Contact*: Mary Golato (202) 219-2804.

j. *Comment Date*: February 4, 1993.

k. *Description of Project*: The proposed project would consist of the following facilities: (1) An existing dam 2,100 feet long; (2) an existing reservoir about 5 miles long, varying in width from 1,500 feet to 6,200 feet, and having a storage capacity of 96,000 acre-feet, and a surface area of approximately 2,020 acres; (3) a new powerhouse housing one turbine-generator unit with an installed capacity of 3.5 megawatts; (4) a transmission line; and (5) appurtenant facilities. The dam is owned by the State of New Hampshire. The average annual generation would be 12,000,000 kilowatt-hours. The estimated cost of the studies under permit would be \$126,000.

m. *This notice also consists of the following standard paragraphs*: A3, A7, A9, A10, B, C, and D2.

19 a. *Type of Application*: Preliminary Permit.

b. *Project No.*: 11374-000.

c. *Date Filed*: November 23, 1992.

d. *Applicant*: Butler County.

e. *Name of Project*: Greene Mill Dam.

f. *Location*: On the Shell Rock River, in the Town of Greene, Butler County, Iowa.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791 (a)-825(r).

h. *Applicant Contact*: Mr. Steve Brunsma, Rural Route 1, Clarksville, Iowa 50619. (319) 278-4237.

i. *FERC Contact*: Charles T. Raabe (dt) (202) 219-2811.

j. *Comment Date*: February 11, 1993.

k. *Competing Application*: Project No. 11345-000.

Date Filed: October 1, 1992.

Due Date: January 8, 1993.

l. *Description of Project*: The existing inoperative project would consist of: (1) A 290-foot-long, 11-foot-high concrete dam; (2) a reservoir having an 85-acre surface area and a 385-acre-foot storage capacity at normal water surface elevation of 946 feet MSL; (3) a

powerhouse containing one 120-kW generating unit and one 250-kW generating unit for a total installed capacity of 370-kW operated at a 9-foot head; (4) a short 13.8-kV transmission line; and (5) appurtenant facilities. The dam is owned by Butler County, Iowa. Applicant estimates that the average annual generation would be 1,750 MWH and that the cost of the studies under the permit would be \$100,000. Power would be sold to the utility company serving the area.

m. *This notice also consists of the following standard paragraphs*: A8, A10, B, C and D2.

20 a. *Type of Application*: New License.

b. *Project No.*: 2584-003.

c. *Date Filed*: December 27, 1991.

d. *Applicant*: Rochester Gas & Electric Corporation.

e. *Name of Project*: Station No. 26 Project.

f. *Location*: On the Genesee River, Monroe County, New York.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact*: Mr. Clyde A. Forbes, Rochester Gas & Electric Corporation, 89 East Avenue, Rochester, NY 14649. (716) 724-8110.

i. *FERC Contact*: Michael Dees (202) 219-2807.

j. *Deadline Date*: February 19, 1993.

k. *Status of Environmental Analysis*: This application has been accepted for filing and is ready for environmental analysis at this time—see attached standard paragraph D9.

l. *Description of Project*: The project structures consist of a dam structure, an intake structure, a penstock, a powerhouse, a tailrace, an impoundment, a transmission line, and appurtenant facilities. The existing project has a generator capacity of 3.0 megawatts (MW), a hydraulic capacity range of 200 to 1,800 cubic feet per second (cfs), and an average annual generation of about 12,000 megawatt-hours (MWH).

The applicant has proposed to replace the turbine's runners, which would increase the gross generating output of the project. The proposed project would have a gross generating output of 3.3 MW, a hydraulic capacity range of 250 to 1,900 cfs, and an average annual generation of about 18,000 MWH.

In detail, the existing and proposed project is described as follows:

(1) A concrete gravity dam consisting of four hydraulically operated sector gates: (a) Two of which are 110 feet long by 9 feet high, with a sill elevation of 502.87 feet mean sea level (msl); and (b) two of which are 54 feet long by 9 feet high, with a sill elevation of 502.87 feet msl;

(2) A concrete intake structure consisting of nine individual bays with trashracks of 1/4 inch bars at 3 3/4 inch spacings, and a total gross area of 1,600 square feet;

(3) A horseshoe-shaped concrete penstock, 262 feet long with an average cross-sectional area of 200 square feet;

(4) A brick and steel powerhouse, about 50 feet long by 45 feet wide by 34 feet high, equipped with one vertical Kaplan electric generating unit having (a) an existing capacity of 3.0 megawatts (MW), a hydraulic capacity range of 200 to 1,800 cubic feet per second (cfs), an average annual generation of 12,000 MWH, and a net head of 25 feet; and (b) the proposed capacity of 3.3 MW, a hydraulic capacity range of 250 to 1,900 cfs, an average annual generation of 18,000 MWH, a net head of 86 feet;

(5) An impoundment having (a) a surface area of 90 acres (AC); (b) a gross storage capacity of 2,000 acre-feet (AF) and a negligible usable storage capacity; and (c) a minimum and maximum headwater elevation of 512.6 to 513.1 feet msl, respectively;

(6) An underground transmission line; and

(7) Appurtenant facilities.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act.

m. *Purpose of Project:* The purpose of the project is to provide electric energy to the applicant's electric system.

n. *This notice also consists of the following standard paragraphs:* A4 and D9.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC, 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at Rochester Gas & Electric Corporation, 89 East Avenue, Rochester, NY, 14649.

21 a. *Type of Application:* Surrender of License.

b. *Project No.:* 8945-008.

c. *Date Filed:* November 9, 1992.

d. *Applicant:* Mansfield Hydro Corporation.

e. *Name of Project:* Natchaug River Project.

f. *Location:* On the Natchaug River, in the Town of Windham, Windham County, and the Town of Tolland, Mansfield County, Connecticut.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Richard D. Ely, III, President, 140 Brookside Lane,

Mansfield Center, CT 06250. (203) 487-1395.

i. *FERC Contact:* Mary Golato (202) 219-2804.

j. *Comment Date:* January 29, 1993.

k. *Description of Project:* The license for this project was issued on June 29, 1988, for an installed capacity of 240 kilowatts. The Federal Energy Regulatory Commission determined that the licensee did not meet the deadline for start of construction.

l. *This notice also consists of the following standard paragraphs:* B, C, and D2.

22 a. *Type of Application:* Major License.

b. *Project No.:* 10749-001.

c. *Date Filed:* December 30, 1991.

d. *Applicant:* Iowa Hydropower Development Corporation.

e. *Name of Project:* Saylorville Dam.

f. *Location:* On the Des Moines River in Polk County, Iowa.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Justin Rundle, 3900 Crosby Drive, Suite 1620, Lexington, KY 40515. (606) 271-4781.

i. *FERC Contact:* Charles T. Raabe (tag) (202) 219-2811.

j. *Deadline Date:* February 22, 1993.

k. *Status of Environmental Analysis:* This application is accepted for filing but is not ready for environmental analysis at this time—see attached paragraph D7.

l. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Saylorville Dam and Reservoir and would consist of:

(1) Six submersible turbine-generator units, three rated at 1,800 kW and three at 1,400 kW, attached to slide gates at the base of the control tower located at the bottom of the reservoir at elevation 793.0 feet;

(2) A turbine-generator unit storage and maintenance platform located on the upstream face of the existing gate tower at elevation 900.0 feet;

(3) a utility raceway consisting of six 4,160 volt 3-phase direct buried cables and a 100 pair direct buried control cable;

(4) A utility building located about 1,200 feet west of the gate tower service bridge;

(5) A switchyard located adjacent and west of the switchgear building; and

(6) Appurtenant electrical and mechanical facilities.

Applicant estimates that the average annual energy production would be 28,300,000 kWh. Energy produced would be sold to the local Iowa Power Company. The application was filed during the term of Applicant's preliminary permit.

n. *This notice also consists of the following standard paragraphs:* A2, A9, and D7.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at 3900 Crosby Drive, Suite 1620, Lexington, KY 40515, (606) 271-4781.

Standard Paragraphs

A2. *Development Application*—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A3. *Development Application*—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A4. *Development Application*—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to

file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit will be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation

of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to the Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application

may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D7. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

D8. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION;" (2) set forth in the

heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

D9. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (February 16, 1993 for Project No. 2325-007 and February 19, 1993 for Project No. 2584-003). All reply comments must be filed with the Commission within 105 days from the date of this notice. (March 30, 1993 for Project No. 2325-007 and April 6, 1993 for Project No. 2584-003).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS", "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions

or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (February 5, 1993 for Project No. 2643-001). All reply comments must be filed with the Commission within 105 days from the date of this notice. (March 22, 1993 for Project No. 2643-001).

Anyone may obtain an extension of this for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the

number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

E. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will notify all persons on the service list and affected resource agencies and Indian tribes. If any person wishes to be placed on the service list, a motion to intervene must be filed by the specified deadline date herein for such motions. All resource agencies and Indian tribes that have official responsibilities that may be affected by the issues addressed in this proceeding, and persons on the service list will be able to file comments, terms and conditions, and prescriptions within 60 days of the date the Commission issues a notification letter that the application is ready for an environmental analysis. All reply comments must be filed with the Commission within 105 days from the date of that letter.

All filings must: (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each

representative of the applicant specified in the particular application.

Dated: December 24, 1992, Washington, DC.

Lois D. Cashell,
Secretary.

[FR Doc. 92-31720 Filed 12-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TA92-1-63-004]

Carnegie Natural Gas Co.; Compliance Filing

December 23, 1992.

Take notice that on December 18, 1992, Carnegie Natural Gas Company ("Carnegie") tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1, with a proposed effective date of December 21, 1992:

Thirty-Ninth Revised Sheet No. 8
Thirty-Ninth Revised Sheet No. 9

Carnegie states that it is filing the above tariff sheets to comply with the Commission's Order on Rehearing issued in the captioned docket on December 3, 1992. Carnegie states that, as directed by the Commission, the above tariff sheets specify the amount of the commodity portion of the refund it received from its pipeline supplier, Texas Eastern Transmission Corporation, on October 30, 1992, which Carnegie intends to offset against the amortizing subaccount of its Account No. 191. Carnegie further states that this filing changes only the language reflected in footnote 4 of its rate sheet (Thirty-Ninth Revised Sheet No. 9), and does not result in any change to its currently-effective rates, as approved by the Commission in Docket Nos. TQ93-2-63-000, *et al.*

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 31, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are

on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 92-31651 Filed 12-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-1-110-002]

Iroquois Gas Transmission System, L.P.; Proposed Changes in FERC Tariff

December 23, 1992.

Take notice that on December 16, 1992, Iroquois Gas Transmission System, L.P., (Iroquois) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Substitute Fifth Revised Sheet No. 4, with a proposed effective date of January 1, 1993.

Iroquois states that it withdraws Fifth Revised Sheet No. 4 filed on December 1, 1992, and Fifth Revised Sheet No. 4 filed on December 3, 1992, and submits Substitute Fifth Revised Sheet No. 4, in order to correctly paginate the substitute sheet, which had been filed on December 3, 1992 to correct a typographical error.

Iroquois states that copies of the filing were served on Iroquois's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 31, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 92-31647 Filed 12-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP93-114-000]

K N Energy, Inc.; Request Under Blanket Authorization

December 22, 1992.

Take notice that on December 17, 1992, K N Energy, Inc. (K N), P.O. Box 281304, Lakewood, Colorado, 80228, filed in Docket No. CP93-114-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for

authorization to operate existing facilities which were installed under Natural Gas Policy Act section 311 authorization, under K N's blanket certificate issued in Docket Nos. CP83-140-000 and CP83-140-001, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

K N proposes to operate the facilities, consisting of interconnections between K N's facilities and those of Red River Pipeline (Red River) and Westar Transmission Company (Westar) in Hemphill County, Texas, for the delivery of transportation volumes to Red River and Westar. It is stated that the facilities include 3,200 feet of 16-inch pipeline and appurtenant facilities for the Red River interconnection, which has a maximum daily capacity of 160,000 Mcf, and 1,000 feet of 12-inch pipeline and measuring and appurtenant facilities for the Westar interconnection, which has a maximum daily capacity of 60,000 Mcf. It is asserted that K N has sufficient capacity to accomplish deliveries without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,
Secretary.

[FR Doc. 92-31633 Filed 12-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-49-000]

Palute Pipeline Co.; Compliance Filing

December 23, 1992.

Take notice that on December 21, 1992, Palute Pipeline Company (Palute) tendered for filing the following tariff sheets to be part of its FERC Gas Tariff, First Revised Volume No. 1-A:

First Revised Sheet No. 11
Second Revised Sheet No. 86
First Revised Sheet Nos. 87 through 89

Paiute states that its filing is being submitted in compliance with Ordering Paragraph (B) of the Commission's May 6, 1992, order (Order) in the above-referenced docket and Order No. 528. Paiute proposes a methodology for the allocation among its customers of fixed take-or-pay buyout costs from Paiute's upstream pipeline, Northwest Pipeline Corporation.

Paiute proposes an effective date of January 15, 1993, for the tendered tariff sheets.

Paiute states that a copy of its filing has been served upon all of Paiute's jurisdictional customers and interested state commissions, as well as upon all parties in Docket No. RP89-245.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before December 31, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room. Lois D. Cashell,

Secretary.

[FR Doc. 92-31652 Filed 12-29-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP93-109-000]

Panhandle Eastern Pipe Line Co.; Application

December 22, 1992.

Take notice that on December 14, 1992, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, filed in Docket No. CP93-109-000 an application pursuant to section 7(b) of the Natural Gas Act wherein it requests issuance of an order permitting and approving the abandonment of a transportation/exchange service between Panhandle and Michigan Wisconsin Pipe Line Company, which is now ANR Pipe Line Company (ANR), all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Panhandle states that by Commission order issued January 18, 1977, in Docket Nos. CP72-2 and CP76-538 (57 FPC

258) Panhandle and ANR were authorized to exchange on an emergency basis up to 100,000 Mcf of gas per day at a point of interconnection of their facilities in Dewey County, Oklahoma. Such exchange is made in accordance with an agreement between Panhandle and ANR dated September 20, 1976 which is currently designated as Panhandle's Rate Schedule E-8 in its FERC Gas Tariff, Original Volume No. 2. Panhandle states that service under Rate Schedule E-8 is no longer required and that termination has been agreed to by Panhandle and ANR.

Further, Panhandle states that ANR will be filing a request for abandonment of its related part of this service.

No facilities are proposed to be abandoned herein.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 12, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for Panhandle to appear or be represented at the hearing.

Lois D. Cashell,
Secretary.

[FR Doc. 92-31632 Filed 12-29-92; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP93-116-000]

Panhandle Eastern Pipe Line Company; Request Under Blanket Authorization

December 23, 1992.

Take notice that on December 17, 1992, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP93-116-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authority to construct and operate a new delivery point for Astral Industries, Inc. (Astral) located in Randolph County, Indiana, under its blanket certificate issued in Docket No. CP83-83-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle states that Astral receives service from Ohio Valley Gas Company (Ohio Valley); however, Panhandle has received a formal request from Astral requesting direct transportation service and a new interconnect with Panhandle's facilities to provide gas service directly to Astral's facilities at Lynn, Indiana. Panhandle further states that at the request of Ohio Valley, Panhandle is currently seeking Commission authorization to abandon service to Ohio Valley in Docket No. CP92-547-000. Panhandle says that Ohio Valley currently receives no transportation service from Panhandle.

Panhandle states that the estimated cost to construct the tap and associated piping is approximately \$39,000. Panhandle would be reimbursed by Astral for the cost of constructing these facilities.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn

within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 92-31653 Filed 12-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM93-2-28-001]

Panhandle Eastern Pipe Line Company; Change in Tariff

December 23, 1992.

Take notice that on December 21, 1992, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1 and FERC Gas Tariff, Original Volume No. 2, with proposed effective date of January 1, 1993:

FERC Gas Tariff, Original Volume No. 1

Sub Ninety-Fourth Revised Sheet No. 3-A
Sub Eighth Revised Sheet No. 3-A.1
Sub Seventy-First Revised Sheet No. 3-B
Sub Eighteenth Revised Sheet No. 3-B.1
Sub Seventeenth Revised Sheet No. 3-F
Sub Twelfth Revised Sheet No. 3-G
Sub Tenth Revised Sheet No. 3-H
Sub Tenth Revised Sheet No. 3-I
Sub Second Revised Sheet No. 3-K

FERC Gas Tariff, Original Volume No. 2

Sub Eighteenth Revised Sheet No. 2731
Sub Fourteenth Revised Sheet No. 3010

Panhandle states that it is filing a revision to its December 1, 1992 GRI filing to reflect the revised underlying base rates change as a result of a December 8, 1992 filing in Docket No. RP92-166-000 to comply with Commission orders dated November 16, 1992 and December 1, 1992.

No change in the GRI Funding Unit is being proposed in this filing.

Panhandle states that copies of the revised tariff sheets are being served on all jurisdictional customers, interested state commissions and all parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before December 31, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are

on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-31654 Filed 12-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP93-24-001 and RP93-37-001]

Tennessee Gas Pipeline Company; Tariff Filing

December 23, 1992.

Take notice that on December 18, 1992, Tennessee Gas Pipeline Company (Tennessee) tendered the following revised tariff sheets to be included in its FERC Gas Tariff:

To Be Effective November 1, 1992

Fourth Revised Volume No. 1

Substitute First Revised Sheet No. 190
Substitute First Revised Sheet No. 486

To Be Effective January 1, 1993

Original Volume No. 2

Substitute 29th Revised Sheet No. 5
Substitute 4th Revised Sheet No. 5A
Substitute 27th Revised Sheet No. 6
Substitute 3rd Revised Sheet No. 6A
Substitute 11th Revised Sheet No. 7
Substitute 3rd Revised Sheet No. 7A
Substitute 12th Revised Sheet No. 8
Substitute 3rd Revised Sheet No. 8A
Substitute 15th Revised Sheet No. 9
Substitute 7th Revised Sheet No. 9A
Substitute 15th Revised Sheet No. 10
Substitute 2nd Revised Sheet No. 10A

Tennessee states that the revised tariff sheets to be effective November 1, 1992, reflect the language concerning the Incremental Pressure Charge applicable to MassPower and the monthly TGIC rate language in the event that Tennessee furnishes fuel, in compliance with the Commission's Order Rejecting Tariff Sheets issued on December 11, 1992, in Docket Nos. RP93-24-000, et al. The revised tariff sheets to be effective January 1, 1993, reflect a correction to certain of the tariff sheets filed as part of Tennessee's December 1, 1992 Take-or-Pay and GRI Recovery Tariff Adjustment filing in Docket No. RP93-37, in order to properly reference "Original Volume No. 2". Tennessee had inadvertently referenced "Fourth Revised Volume No. 1" on these sheets in the December 1, 1992 filing. No substantive changes were made.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be

filed on or before December 31, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-31655 Filed 12-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP85-177-101 and RP93-13-002]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

December 23, 1992.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on December 21, 1992 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the tariff sheets listed below:

Effective November 1, 1992

Sub Fourth Revised Sheet No. 603
Sub Fifth Revised Sheet No. 604
Sub First Revised Sheet No. 634

Effective November 29, 1992

2nd Sub Fifteenth Revised Sheet No. 802

Texas Eastern states that on October 28, 1992, in Docket No. RP85-177-097, Texas Eastern Transmission Corporation ("Texas Eastern") submitted tariff sheets to eliminate the GSIRC in compliance with the Commission's August 31, 1992 "Order Denying Consolidation, Setting Termination Date for Gas Inventory Charge, and Denying Rehearing", to resolve a remaining GSIRC issue and, as a result of elections made by Elizabethtown Gas Company (Elizabethtown) to revert back to service under Rate Schedules DCQ and GS, to reinstate Rate Schedule GS.

Texas Eastern states that on November 25, 1992, in Docket Nos. RP85-177-097, RP85-177-098, RP93-13-000, RP93-22-000 and CP90-2154-003, the Commission issued an "Order Accepting Interim Stipulation and Agreement, Application for Limited Term Amendment to Certificate Authority, Tariff Filing, and Compliance Filing, Subject to Conditions, and Denying Petitions for Declaratory Orders" ("November 25 Order"). As relevant to the October 28, 1992 filing in Docket No. RP85-177-097, Ordering Paragraph (A) of the November 25 Order requires Texas Eastern to make certain modifications to Appendix A of such order. In particular, the November 25 Order requires Texas Eastern to (1) reinstate for Rate Schedules DCQ and

GS the old Form of Service Agreements to include the exculpatory clause that was in effect before the Settlement became effective, and (2) file information showing that its revised GSIRC crediting mechanism does not reduce GSIRC refunds to other customers.

Texas Eastern states that this filing is without prejudice to the pending request for rehearing, and/or other timely requests for rehearing which Texas Eastern may file with respect to the November 25 Order.

The proposed effective dates of the tariff sheets listed above are November 1, 1992 and November 29, 1992, as indicated.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions. Texas Eastern also states that copies of the filing have also been served on all parties on the service list in Docket Nos. RP88-67, et al., (Phase I) and Docket No. RS92-11.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before December 31, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-31648 Filed 12-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-25-000]

Trunkline Gas Co.; Technical Conference

December 23, 1992.

Take notice that a technical conference will be convened in this proceeding on Thursday, January 21, 1993 at 9:30 a.m. in Trunkline Gas Company's offices at 5400 Westheimer Court, Houston, TX. The technical conference will reconvene at 9 a.m. Friday, January 22, 1993. The purpose of the meeting is to address Trunkline Gas Company's proposed tariff language for implementation of Order Nos. 636, 636-A and 636-B and other issues that parties may raise. Trunkline Gas Company will file comments in

response to the technical conference no later than January 29, 1993.

All interested parties are invited to attend. Attendance at the conference, however will not confer party status. For additional information, interested parties may call Chris Young at 208-0088 or Keith Pierce at 208-0372.

Lois D. Cashell,

Secretary.

[FR Doc. 92-31650 Filed 12-29-92; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP85-39-009]

Wyoming Interstate Co., Ltd.; Cost and Revenue Study

December 23, 1992.

Take notice that on December 21, 1992, Wyoming Interstate Company, Ltd. ("WIC") filed a Cost and Revenue Study in compliance with Federal Energy Regulatory Commission ("Commission") order issued on May 21, 1991, approving the WIC rate settlement in Docket No. RP85-39-000.

WIC notes that this study shows its revenues at current rates under-recover its adjusted actual costs for the twelve months ended September 30, 1992, by approximately \$2.0 million. WIC also notes that as a result of the \$2.0 million revenue shortfall, it is already funding the flowback of overfunded deferred income taxes through its current rates, which is consistent with the rate settlement. WIC further notes that even after funding of such excess deferred income taxes, WIC's revenues at current rates will still under-recover its costs by some \$1.6 million. WIC states that through this filing it is proposing no changes in its rates or in its currently effective tariff.

WIC states that copies of this filing are being served on each person designated on the Commission's official service in this proceeding, and are otherwise available for public inspection at WIC's offices in Colorado Springs, Colorado.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before December 31, 1992. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are

on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 92-31649 Filed 12-29-92; 8:45 am]

BILLING CODE 6717-01-M

Office of Fossil Energy

[FE Docket No. 89-33-NG]

Niagara Mohawk Power Corporation; Order Amending Conditional Order and Granting Final Long-Term Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued a final order granting Niagara Mohawk Power Corporation authorization to import at Waddington, New York, or Niagara Falls, New York as an alternative, up to 51,000 Mcf of Canadian natural gas per day for a term of 14 years extending through October 31, 2006.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 21, 1992.

Charles F. Vacek,

Deputy Assistant Secretary for Fuels Programs, Office of Fossil Energy.

[FR Doc. 92-31594 Filed 12-29-92; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4549-9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before January 29, 1993.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: National Water Quality Inventory Reports (ICR No. 1560.03).

Abstract: ICR No. 1560.03 describes the information requirements associated with Clean Water Act (CWA) sections 305(b), 303(d), 314(a), and 106(e). Under section 305(b), States and Territories must discuss the quality of their waters in a biennial report to the EPA. Under section 303(d), States and Territories must identify and rank waters which do not meet water quality standards after the application of technology-based controls. Under section 314(a), the States and Territories must report on the status of publicly-owned lakes and on efforts to improve their water quality. Under section 106(e), the States and Territories must report monitoring information concerning water quality in navigable waters and groundwater.

EPA's Assessment and Watershed Protection Division (AWPD) assembles the information submitted by the States and Territories and uses it to prepare the biennial National Water Quality Inventory Report to Congress, which is required by section 305(b)(2) of the CWA.

Burden Statement: The average burden associated with the National Water Quality Inventory Reports is 4,322 hours per response. This total includes time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the collection of information.

Respondents: States, Territories, River Basin Commissions.

Estimated No. of Respondents: 58.

Estimated Total Annual Burden on Respondents: 250,676 hours.

Frequency of Collection: Biennial.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223Y), 401 M Street, SW., Washington, DC, 20460.

and

Matt Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC, 20503.

Dated: December 23, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-31746 Filed 12-29-92; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4550-8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before January 29, 1993. For further information, or to obtain a copy of this ICR, contact Sandy Farmer at EPA (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Pesticides and Toxic Substances

Title: Certified/Commercial Pesticide Applicator Survey (EPA ICR No. 1628.01). This is a new collection.

Abstract: Under the authority of Public Law 101-624, the EPA will conduct a survey of non-agricultural Certified/Commercial Pesticide Applicators. The survey is designed to provide the Agency with comprehensive data on pesticide usage by non-agricultural applicators, by site and pest. The respondents surveyed are asked to specify each chemical they use by EPA registration number and by any other means used to identify the product. For each chemical product they use, respondents are asked: (i) The quantity used over a specified 12-month period; (ii) the number of individual applications of the product; (iii) the dates of applications; and (iv) the quantities used, by site, target pest, units treated and geographic area. In addition, respondents are asked to identify the numbers of specified types of sites treated with pesticides, for example, lawns, residences, businesses, golf courses, etc.

EPA will use the data to meet the Congressional mandate which directs the Agency to publish annual

comprehensive reports concerning pesticides use.

Burden Statement: The burden for this collection of information is estimated to average 5.4 hours per response. This estimate includes the time needed to review instructions, gather the data needed, complete the forms and review the collection of information.

Respondents: Non-agricultural Certified Pesticide Applicators and Commercial Applicators.

Estimated No. of Respondents: 4,000

Estimated No. of Responses Per Respondent: 1

Estimated Total Annual Burden on Respondents: 21,445 hours

Frequency of Collection: Annually

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to: Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM 223Y), 401 M Street, SW., Washington, DC 20460, and Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: December 23, 1992.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 92-31747 Filed 12-29-92; 8:45 am]

BILLING CODE 6560-50-M

[PF-569; FRL-4177-7]

Pesticide Petitions and Food/Feed Additive Petitions; Filings

AGENCY: Environmental Protection Agency (EPA)

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions (PP) and food and feed additive petitions (FAP) proposing the establishment of regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm 1128, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI).

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, contact the PM named in each petition at the following office location/telephone number:

Product Manager	Office location/telephone number	Address
George LaRocca (PM-13).	Rm. 202, CM #2, 703-305-8100.	1921 Jefferson Davis Hwy., Arlington, VA
Dennis Edwards (PM-19).	Rm. 207, CM #2, 703-305-6386.	Do.
Susan Lewis (PM-21)	Rm. 227, CM #2, 703-305-6900.	Do.
Cynthia Giles-Parker (PM-22).	Rm. 229, CM #2, 703-305-5540.	Do.
Robert Taylor (PM-25).	Rm. 241, CM #2, 703-305-6800.	Do.
Hoyt Jamerson (PM-43).	Rm. 718, CM #2, 703-305-5310.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions and food/feed additive petitions as follows proposing regulations for residues of certain pesticide chemicals in or on various agricultural commodities.

Initial Filings

1. **PP 2F4116.** Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105, proposes to amend 40 CFR 180.443 by establishing a regulation to permit combined residues of fungicide myclobutanil (alpha-butyl-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile) and its metabolite alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile (free and bound) in or on cherries at 5.0 ppm. (PM-21)

2. **PP 2F4121.** BASF Corp., Agricultural Chemicals, P.O. Box 13528, Research Triangle Park, NC 27709-3528, proposes to amend 40 CFR 180.412 by establishing a regulation to permit

combined residues of sethoxydim 2-[1-(ethoxymino)butyl]-5-[2(ethylthio)propyl]-3-hydroxy-2-cyclohexene-1-one and its metabolites containing the 2-cyclohexene-1-one moiety (calculated as the herbicide) in or on clover. (PM-25)

3. **PP 2F4127.** Rohm & Haas Co., Agricultural Chemicals Registration and Regulatory Affairs, Independence Mall, Philadelphia, PA 19105, proposes to amend 40 CFR part 180 by establishing a regulation to permit combined residues of fenbuconazole (alpha-(2-(4-chlorophenyl)-ethyl)-alpha-phenyl-3-(1H-1,2,4-triazole)-1-propanenitrile) in or on wheat (grain, straw and processed fractions), poultry, meat, milk, and eggs. (PM-22)

14. **PP 2F4133.** Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105, proposes to amend 40 CFR part 180 by amending the tolerance expression for residues of mancozeb in or on papayas to "10 ppm on papayas." (PM-21)

5. **PP 2F4135.** Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of fenbuconazole (alpha-(2-(4-chlorophenyl)-ethyl)-alpha-phenyl-3-(1H-1,2,4-triazole)-1-propanenitrile) in or on apples at 4.0 ppm, apple juice at 0.8 ppm, apple pomace (wet) at 0.8 ppm, apple pomace (dry) at 3.0 ppm. (PM-22)

6. **PP 2F4137.** Miles, Inc., 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120-0013, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of the insecticide cyfluthrin, cyano-(4-fluoro-3-phenoxyphenyl) methyl 3-(2,2-dichloroethyl)-2,2-dimethyl-cyclopropanecarboxylate, in or on sorghum, forage at 2.0 ppm, sorghum, grain at 4.00 ppm, sorghum, fodder, silage, and hay at 5.00 ppm. (PM-13)

7. **PP 2F4139.** FMC Corp., Agricultural Chemicals Group, 1735 Market St., Philadelphia, PA 19103, proposes to amend 40 CFR part 180 by establishing a regulation to permit residues of bifenthrin ((2-methyl[1,1'-biphenyl]-3-yl) methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate) in or on filberts at 0.05 ppm and pistachios at 0.05 ppm. (PM-13)

8. **PP 2F4154.** Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105, proposes to amend 40 CFR part 180, by establishing a regulation to permit residues of fenbuconazole (alpha-(2-(4-chlorophenyl)-ethyl)-alpha-phenyl-3-(1H-1,2,4-triazole)-1-propanenitrile) and its metabolites (5-(4-chlorophenyl)-dihydro-3-phenyl-3-

(methyl-1H-1,2,4-triazole-1-yl)-2-3H-furanone), in or on bananas (pulp) at 0.05 ppm and bananas (peel) at 0.3 ppm. (PM-22)

9. **PP 2F4155.** Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105, proposes to amend 40 CFR 180.443, by establishing a regulation to permit residues of myclobutanil (alpha-butyl-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile), and both the free and bound forms of its metabolite (alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile) in or on cucurbit crop group at 0.5 ppm. (PM-21)

10. **FAP 2H5641.** Rhone-Poulenc AG Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, proposes to amend 40 CFR part 185 by establishing a food additive regulation to permit combined residues of aldicarb, aldicarb sulfoxide, and aldicarb sulfone in or on soybean meal at 0.04 ppm. (PM-19)

11. **FAP 2H5642.** Whitmire Research Laboratories, Inc., 3568 Tree Court, St. Louis, MO 63122, proposes to amend 40 CFR part 185 by establishing a food additive regulation to permit residues of whitmire avert (abamectin) on food-handling preparation and serving areas. (PM-13)

12. **FAP 2H5643.** Office of IR-4, Cook College, P.O. Box 231, Rutgers, State University of NJ, New Brunswick, NJ 08903-0231, proposes to amend 40 CFR part 186 by establishing a feed additive regulation to permit residues of norflurazon on hops (spent). (PM-43)

13. **FAP 2H5644.** Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105, proposes to amend 40 CFR part 185 by establishing a food additive regulation to permit residues of myclobutanil in or on dried prunes. (PM-21)

14. **FAP 2H5645.** Rhone-Poulenc AG Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, proposes to amend 40 CFR part 185, by establishing a food additive regulation to permit combined residues of the insecticide thiodicarb and its toxic metabolite, methomyl, in or on processed hot peppers at 45.0 ppm. (PM-19)

15. **FAP 2H5646.** IR-4, Cook College, P.O. Box 231, Rutgers, State University of NJ, New Brunswick, NJ 08903-0231, proposes to amend 40 CFR part 186 by establishing a feed additive tolerance for residues of the insecticide phorate (O,O-diethyl-S-((ethylthio)methyl)phosphorodithioate) and its cholinesterase-inhibiting metabolites in or on feed, dried and spent hops at 2.0 ppm. (PM-43)

Authority: 7 U.S.C. 136a.

Dated: December 17, 1992.

Lawrence E. Culleen,
Acting Director, Registration Division, Office
of Pesticide Programs.

[FR Doc. 92-31570 Filed 12-29-92; 8:45 am]
BILLING CODE 6560-50-F

[OPP-34038; FRL 4179-8]

Notice of Receipt of Requests for Amendments To Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on March 30, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 220, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the

Federal Register. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the six pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before March 30, 1993 to discuss withdrawal of the applications for amendment. This 90-day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Registration No.	Product name	Delete from label
000004-00196	Benomyl 50% W.P.	Ornamentals, bulbs
000239-00568	Ortho Home Orchard Spray	Plums, prunes
000802-00490	Miller Benomyl Systemic Fungicide	Ornamentals, roses, flowers, shade trees (foliar spray & drench)
062719-00019	N-Serve 24E Nitrogen Stabilizer	Cotton, strawberries
062719-00020	N-Serve 24 Nitrogen Stabilizer	Cotton, strawberries
062719-00114	Balan L.C.	Alfalfa, birdsfoot trefoil, clover (sisike, ladino red), direct seeded lettuce

The following Table 2, includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA company No.	Company name and address
000004	Bonide Products, Inc., Wurz Avenue, Yorkville, NY 13495.
000239	Chevron Chemical Co., Ortho Consumer Products Div., 940 Hensley St., Richmond, CA 94804.
000802	The Chas. H. Lilly Co., 7737 NE Killingsworth, Portland, OR 97218.
062719	DowElanco, Quad IV 9002 Purdue Rd., Indianapolis, IN 46268.

II. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

Dated: December 14, 1992.

Douglas D. Camp,
Director, Office of Pesticide Programs.

[FR Doc. 92-31449 Filed 12-29-92; 8:45 am]
BILLING CODE 6560-50-F

[OPP-100114; FRL-4159-2]

Oak Ridge National Laboratory and Martin Marietta Inc.; Transfer of Data

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Food, Drug, and Cosmetic Act (FFDCA). The Oak

Ridge National Laboratory (ORNL) and Martin Marietta Inc., under an Interagency Agreement (IAG) will perform work for the EPA Office of Pesticide Programs (OPP) and will be provided access to certain information submitted to EPA under FIFRA and the FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to ORNL and the Martin Marietta Inc. consistent with the requirements of 40 CFR 2.209(c) and

2.308(i)(2). This transfer will enable ORNL and Martin Marietta Inc. to fulfill the obligations of an IAG and this notice serves to notify affected persons.

DATES: ORNL and Martin Marietta Inc. will be given access to this information no sooner than January 11, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: Clare Grubbs, Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 212, Crystal Mall 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-7560.

SUPPLEMENTARY INFORMATION: Under this IAG DW89935060-01 which supports the OPP regulatory efforts, the Biomedical and Environmental Information Analysis Section of the Health and Safety Research Division at ORNL will assist OPP in developing uniform standards for evaluating ocular toxicity.

OPP has determined that the IAG herein described involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this IAG. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.209(c), 2.307(h), and

2.308(h)(2), this IAG with ORNL and Martin Marietta Inc., prohibits use of the information for any purpose other than the purposes specified in this IAG; prohibits disclosure of the information in any form to a third party without prior written approval from the Agency; and requires that each official and employee sign an agreement to protect the information from unauthorized release or compromise. No information will be provided until the above requirements have been fully satisfied. Records of information provided under this IAG will be maintained by the Project Officer for this contract in OPP.

All information supplied to ORNL and Martin Marietta Inc. by EPA for use in connection with this IAG will be returned to EPA when ORNL and Martin Marietta Inc. have completed their work.

Dated: December 16, 1992.

Susan H. Wayland,
Acting Director, Office of Pesticide Programs.
[FR Doc. 92-31306 Filed 12-29-92; 8:45 am]
BILLING CODE 5550-50-F

[OPP-66169; FRL 4178-3]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA),

as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by March 30, 1993, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (H7502C), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 220, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305-5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the Federal Register before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 46 pesticide products registered under Section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1:

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product name	Chemical name
000100 MT-92-0006	Gas cartridge (as a device for burrowing animal control)	
000475-00218	Mildew Wizard	Sodium hypochlorite
000475-00224	Saniflush 4 Month Automatic Bowl Cleaner	Calcium hypochlorite
000475-00296	Outdoor Repellent for Dogs and Cats	Methyl nonyl ketone
000475-00298	Indoor Repellent for Dogs and Cats	Methyl nonyl ketone
000476 GA-82-0015	Dyfonate 10-G	O-Ethyl S-phenyl ethylphosphonodithioate
000655-00345	Prentox Methoxychlor Technical 100%	Methoxychlor (2,2-bis(p-methoxyphenyl)-1,1,1-trichloroethane)
001001-00004	PMAS Fungicide for Winter Turf Diseases	Phenylmercuric acetate
001258-00004	Lo-Bax Special	Calcium hypochlorite
001258-00911	Olin HTH Granular Dry Chlorine-60 for Swimming Pools	Calcium hypochlorite
001258-00915	Olin Mildew-Rid	Calcium hypochlorite
001258-00919	Olin Instant Mildew Rid	Calcium hypochlorite
001258-00971	Olin Minute Mildew Rid	Calcium hypochlorite
001258-00978	Olin HTH Dry Chlorinator Granular - 62	Calcium hypochlorite
001258-00979	Olin HTH Dry Chlorinator Tablets - 62	Calcium hypochlorite
001258-01058	Calcium Hypochlorite Sanitizer Tablets -55	Calcium hypochlorite

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product name	Chemical name
001258-01063	Calcium Hypochlorite Sanitizer Granular-60	Calcium hypochlorite
001258-01067	Calcium Hypochlorite Sanitizer Tablets-50	Calcium hypochlorite
001258-01068	Calcium Hypochlorite Sanitizer Granular-55	Calcium hypochlorite
001258-01098	HTH Plus Superchlorinator and Shock Treatment	Calcium hypochlorite
001258-01110	HTH System III Tablets	Calcium hypochlorite Copper sulfate
001258-01111	HTH System II Tablets	Calcium hypochlorite Copper sulfate
001258-01112	HTH Super System Tablets	Calcium hypochlorite Copper sulfate
001258-01114	HTH System III Granular	Calcium hypochlorite Copper sulfate
001258-01115	HTH System II Granular	Calcium hypochlorite Copper sulfate
001258-01116	HTH Super System Granular	Calcium hypochlorite Copper sulfate
001258-01118	HTH System II Superchlorinator Shock	Calcium hypochlorite Copper sulfate
001258-01119	HTH System III Superchlorinator Shock	Calcium hypochlorite Copper sulfate
001258-01120	HTH Super System Superchlorinator Shock	Calcium hypochlorite Copper sulfate
001258-01121	HTH Granular - S	Calcium hypochlorite
001258-01122	HTH Superchlorinator Shock - S	Calcium hypochlorite
001258-01149	HTH Duration Plus Tablets	Calcium hypochlorite
001258-01150	HTH Super Duration Tablets	Alkyl* dimethyl benzyl ammonium chloride *(100% C14) Calcium hypochlorite
004758-00026	Holiday Aerogel Powder Dries Up Roaches	Diisobutylphenoxyethoxyethyl dimethyl benzyl ammonium chloride (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Silica gel
007368-00020	Sani-Clor Bleach	Sodium hypochlorite
009444-00078	Purge Flea & Tick Insecticide Powder	1-Naphthyl-N-methylcarbamate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins Silica gel
012014-00030	Poolcare Chc Granules	Calcium hypochlorite
012014-00038	Poolcare CHC Tablets	Calcium hypochlorite
033660-00034	Atrazine Technical II	2-Chloro-4-(ethylamino)-6-(isopropylamino)-s-triazine
037621-20001	Cheml-Cal	Sodium hypochlorite
045159-20002	Hypo-Clo Chlorinating Solution	Sodium hypochlorite
045639-00053	Antor Herbicide	N-Chloroacetyl-N-(2,6-diethylphenyl)glycine, ethyl ester
045639-00054	Antor 4ES Herbicide	N-Chloroacetyl-N-(2,6-diethylphenyl)glycine, ethyl ester
049403-00008	Sanitized Brand SK	2,2'-Thiobis(4-chlorophenol)
049403-00018	Nipacide F-40	2,2'-Thiobis(4-chlorophenol)
056899-20007	Sodium Hypochlorite	Sodium hypochlorite

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90 day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA company No.	Company name and address
000100	Ciba-Geigy Corp., Box 18300, Greensboro, NC 27419.
000475	Reckitt & Coleman Household Products, 1655 Valley Rd, Wayne, NJ 07474.
000476	Stauffer Chemical Co./ICI Americas Inc., Agricultural Products, Concord Pike & New Murphy Rd, Wilmington, DE 19897.
000655	Prentiss Inc., C. B. 2000, Floral Park, NY 11002.
001001	Clary W A Corp., 1049 Somerset St., Somerset, NJ 08873.
001258	Olin Corp., Box 586, Cheshire, CT 06410.
004758	Pet Chemicals, Box 18993, Memphis, TN 38181.
007368	Grow Group, Inc., 2501 Malt Ave., City Of Commerce, CA 90040.
009444	Waterbury Companies Inc., 100 Calhoun St., Box 640, Independence, LA 70443.
012014	A & V Inc., N62 W22632 Village Drive, Sussex, WI 53089.
033660	Industrial Prodotti, c/o Pazianos Assoc., 1338 G St S.E., Washington, DC 20003.
037621	American Bleach Mfg Co., 3600 Chamberlain Ln, 4220, Louisville, KY 40241.
045159	Mobile Water Technology, Box 14867, Memphis, TN 38114.
045639	NOR-AM Chemical Co., 3509 Silverside Rd., Wilmington, DE 19803.
049403	Nipa Labs, Inc., c/o Pazianos Assoc., 1338 G St S.E., Washington, DC 20003.
056899	RMI Titanium Co - Sodium Plant, (an Ohio Corp.), Box 269, Niles, OH 44446.

III. Loss of Active Ingredients

Unless these requests for cancellation are withdrawn, two pesticide active ingredients will no longer appear in any registered products. Those who are concerned about the potential loss of these active ingredients for pesticidal use are encouraged to work directly with the registrants to explore the possibility of their withdrawing the request for cancellation. These active ingredients are listed in the following Table 3 with the EPA Company Number of their registrants.

TABLE 3. — ACTIVE INGREDIENTS WHICH WOULD DISAPPEAR AS A RESULT

EPA company No.	Chemical name/CAS No.
049403	Thiobis(4-chlorophenol) (97-24-5)
045639	Chloroacetyl-N-(2,6-diethylphenyl)glycine, ethyl ester

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before March 30, 1993. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a

registrant to sell or distribute existing stocks for 1-year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in Federal Register No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the

EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

Dated: December 14, 1992.

Douglas D. Camp,

Director, Office of Pesticide Programs.

[FR Doc. 92-31448 Filed 12-29-92; 8:45 am]

BILLING CODE 6560-50-F

[OPP-180881; FRL 4181-2]

Receipt of Application for Emergency Exemption to Use Hydrogen Cyanamide; Solicitation of Public Comment**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice.

SUMMARY: EPA has received a specific exemption request from the Texas Department of Agriculture (hereafter referred to as the "Applicant") to use the pesticide hydrogen cyanamide (CAS 420-04-2) on up to 5,000 acres of peach trees as a growth regulator, to break peach tree dormancy. The Applicant proposes the use of a new chemical; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before January 14, 1993.

ADDRESS: Three copies of written comments, bearing the identification notation "OPP-180881," should be submitted by mail to: Public Docket and Freedom of Information Section, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Rm. 718, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-305-7890).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at his discretion, exempt a State agency from any registration provision of FIFRA if he determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of Dormex on peach trees as a growth regulator to break the trees' dormancy period. Information in accordance with 40 CFR part 166 was submitted as part of this request.

The Applicant states that a serious situation could be developing in Texas, due to the unusually warm winter temperatures, which are likely to result in inadequate chilling hours required to break peach dormancy. Each peach variety requires a certain number of "chilling hours" (hours below 45°F) during the winter to resume normal growth in the spring. Insufficient chilling results in lack of leaves, and fruit abortion. Peach varieties grown in Texas require anywhere from 350 up to 600 chilling hours to break their dormancy period. The Applicant claims that peaches that are as little as 100 hours short on their chilling hours will have yields reduced by one-half or more, and the fruit will likely be of too poor quality to pack for shipment. If they are 200 hours short of their chilling requirement, a total crop failure often results. Trees which are 200 hours or more short on chilling requirement frequently have major limbs die and produce a reduced crop the following year.

Some meteorologists are predicting warmer than normal temperatures for Texas for this winter. The Applicant states that in a low chilling year (such as occurred in 1989), production can fall to one-half of normal. It is estimated that in a moderately low chilling winter, about 25 percent of the peach trees in the state of Texas would suffer from lack of chilling. Based on the farm gate value for peaches in 1991 of \$8.7 million, a 25 percent loss in production would represent a dollar loss of up to \$2.2 million for Texas peach growers. The Applicant states that since peaches are a labor-intensive crop, they also provide thousands of jobs, and are an important component of the economies of many Texas counties.

The Applicant plans to treat up to 5,000 acres using up to 7,337 gallons of product (30,000 pounds active ingredient). A single application would be applied (if conditions warrant) during mid-winter (usually mid-January-first week in February) in the

requested areas of treatment, 4-6 weeks before normal bud break. A 0.5 to 1.5 percent Dormex plus 0.25 percent non-ionic surfactant solution would be prepared in water to make 100 gallons of spray solution. Fifty to 100 gallons of finished spray per mature acre would be applied using an air blast sprayer or handgun.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for the opportunity for public comment on the application. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Texas Department of Agriculture.

Dated: December 15, 1992.

Lawrence E. Culleen,
Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 92-31447 Filed 12-29-92; 8:45 am]
BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. CL-93-36]

Common Carrier Public Mobile Information; Dates and Filing Requirements for Applications for Cellular Radio Unserved Areas

December 23, 1992.

Initial cellular radio licensees are given five years to construct and expand their cellular systems. After the five-year fill-in period expires, the areas in which the initial licensees are not providing service are defined as "unserved areas." Rules have now been completed for accepting applications for the unserved areas. The Commission's cellular radio unserved area rules establish a two phase application processing procedure for all markets. In Phase I, applications may be filed during specified filing windows for any unserved area that may exist on frequency blocks within each market. In Phase II, unserved area applications will be processed on a first come, first served basis. Phase II will begin for a frequency block in a market on the 121st day after

the Phase I license authorization is granted, unless no Phase I applications are received during the filing window, in which case Phase II will begin the next day.

Ten filing windows beginning March 10, 1993 and ending May 12, 1993 are designated herein for filing Phase I applications for unserved areas. Specific filing dates for markets and frequency blocks are listed on pages 5 through 14 of this notice. The list includes the frequency blocks in markets in which the fill-in period expired or will expire on or before March 15, 1993. Also included in the list is a frequency block in a market in which no applications were filed, and frequency blocks in markets where the authorizations were cancelled for failure to construct. This list does not indicate whether there is any unserved area, but merely specifies filing windows for the acceptance of applications. Applicants must determine the availability of unserved areas within the frequency blocks of specific markets by researching the commission's station files and reviewing the cellular System Informational Updates (SIUs) filed by the licensees.

No further public notice will be made regarding future filing windows. Applicants are reminded that section 22.924(a) of the Commission's Rules automatically establishes the filing dates for unserved area applications for frequency blocks in markets in which the fill-in period expires after March 15, 1993, as the 31st day after the system's fill-in period expires. Because of this, filing dates for some additional frequency blocks within other markets may occur within the March 10 through May 12, 1993 period specified in the lists on pages 5 through 14 of this notice.

Phase I applications for unserved areas have a one day filing window. Applications filed before this window will be dismissed as untimely filed. Applications filed after this window also will be dismissed as untimely filed, unless no applications are filed during the filing window, in which case the applications will be processed as Phase II applications.

All applications must be filed with the Commission at Pittsburgh, Pennsylvania. Applications sent via U.S. Postal Service must be addressed as follows: Federal Communications Commission, Unserved Cellular-Market No. _____, 3 Mellon Bank Center, 525 William Penn Way, P.O. Box 358862, Pittsburgh, PA 15251-5862.

* Note: This address should include Market No. and specify Block A or B, e.g., 123 A.

Applications shipped via courier or hand carried must be brought to the following address during the 24-hour period for that day (midnight to midnight): Federal Communications Commission, Unserved Cellular Filing, 3 Mellon Bank Center, 525 William Penn Way, Pittsburgh, PA 15259.

Format of Applications

Phase I applications must consist of: (1) a completed transmittal sheet (FCC Form 464), a copy of which is attached hereto (see page 4 and the attachment hereto); (2) a \$230 filing fee; and (3) a sealed 5" x 7.5" envelope containing two microfiche copies of the application.

Applications must be prepared in accordance with sections 22.6 and 22.924 of the Commission's Rules.

* Each microfiche must be labeled at the top with the Applicant's Name, Market Number, Market Name, and Frequency Block. For example:

Jones, Robert Market #123, Santa Rosa-Petaluma, CA Frequency Block A

* One microfiche jacket must be labeled "Original" and the other jacket must be labeled "Copy."

* The microfiche must be black and white (purple or blue microfiche are unacceptable because they do not produce readable paper copies), and the "original" microfiche must be of archival quality.

* The 5" x 7.5" microfiche envelope must be clearly labeled with the Applicant's Name, Market Number, Market Name, and the Frequency Block as specified by section 22.6(d)(3)(v).

* The certification required under section 22.924(c) is included on Form FCC 464, "Transmittal Sheet for Cellular Applications for Unserved Areas." Applicants are required to submit the transmittal sheet as the first page of the application (i.e., immediately inside the cover).

Receipt Copies

Applicants wishing a stamped receipt copy of the transmittal sheet must provide an additional copy for each application submitted.

* Applications that are mailed or shipped via courier must contain a self-addressed stamped envelope of sufficient size to accommodate the stamped receipt copy to be returned. The stamped receipt copy of the transmittal sheet and the self-addressed stamped envelope must be placed inside the mailing envelope but on top of the application. If the request for the stamped receipt copy is submitted in any other format, the application will be

processed but the copy will not be stamped and returned.

* When hand delivering an application, the stamped receipt copy must be attached to the outside of the 9" x 12" envelope containing the application and will be stamped and returned when presented to the acceptance clerk.

Points to Remember

1. Each application with associated materials (transmittal sheet, check or money order, and 5" x 7.5" microfiche envelope) must be separately packaged in a 9" x 12" outer envelope.

2. A completed transmittal sheet (FCC Form 464) is required with each application. It must be signed in ink (preferably not black ink). See section 22.924(c)(1)(i)(E) of the Commission's Rules.

3. The microfiche must be of a signed copy of the application, be properly labeled and enclosed in a properly labeled envelope. The information (Applicant's Name, Market Number, Market Name and Frequency Block) on the top of the microfiche, on the microfiche envelope, and on the transmittal sheet must all agree.

4. The reduced map must be included in the microfiche copies of the application.

5. No extraneous material (such as transmittal letters) should be submitted.

6. The market name and number must match.

7. A single check or money order in the amount of \$230 (made payable to the Federal Communications Commission) must be included with each application. The submission of cash is strongly discouraged.

8. Postdated, third party, or dishonored checks will result in automatic dismissal of the application.

9. For applications delivered by any means other than the U.S. Postal Service, the market number and frequency block must appear in the lower left hand corner of the 9" x 12" outer envelope.

10. The 9" x 12" outer envelope may be placed inside a shipping envelope when applications are shipped by couriers which use special shipping envelopes.

11. DO NOT submit FAA Form 7460-1 to the Federal Aviation Administration at the time of filing the Phase I application. See section 22.924(c)(4) of the Commission's Rules.

12. Applications will not be accepted under the backup filing procedures allowing unofficial copies to be filed and date stamped at the Commission's Washington, DC office, together with evidence of timely shipment to Pittsburgh. Applications will be

considered untimely if not filed in Pittsburgh within the specified time period. Accordingly, applicants will not receive an extra day in which to file.

Transmittal Sheet

Attached is a copy of Form FCC 464, "Transmittal Sheet for Cellular Applications for Unserved Areas" which must be filed with each cellular application. You may make copies of the attached form for your use. Applicants should use the January 1992 edition of the transmittal sheet which was designed specifically for unserved area applications. Applications with previous editions of the transmittal sheet will not be acceptable for filing. The Commission will not accept computer-generated versions of the transmittal sheet. You may obtain a limited number of copies of the FCC 464 form in the Public Forms Self-Service Center, room L-17, 1919 M Street, NW., Washington, DC. Additional copies of the forms may be ordered by calling 202-632-FORM or by writing to: Federal Communications Commission, Forms Distribution Center, 2803 52nd Avenue, Hyattsville, MD 20781.

The following items MUST be completed on the transmittal sheet:

- 1(a) Name
- 1(b) Mailing Address
- 1(c) Second line of mailing address (use only if needed to show complete address)
- 1(d) City
- 1(e) State
- 1(f) Zip Code
- 1(g) Call Sign (use only if application is for an existing system)
- 1(h) Telephone Number
- 2(c) Fee Due
- 3(a) Market No. and Block (Use line 1 only for Phase I applications. Lines 2-4 will be applicable for Phase II applications.)
- 3(b) Market Name
- 4 Certification (The Date Signed, Typed/Printed Name, Signature, and Typed/Printed title blocks must be completed.)
- 5 Contact Representative (Complete if applicable)

For further information contact Steve Markendorff at 202-653-5560.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Acceptance of Applications for Cellular Unserved Areas

March 10, 1993

390 A Idaho 3—
Lemhi.
525 A Montana
3—Phillips.

485 A Minnesota
4—Lake.
650 A Tennessee
8—Johnson.

Acceptance of Applications for Cellular Unserved Areas—Continued

722 A Wyoming
5—Converse.
1 A New York,
NY.
2 A Los Angeles,
CA.
3 A Chicago, Illinois.
4 A Philadelphia, PA.
5 A Detroit,
Michigan.
6 A Boston, MA

7 A San Francisco, CA.
8 A Washington, D.C.
9 A Dallas, Texas.
10 A Houston, Texas.
11 A St. Louis, MO/IL.
12 A Miami, Florida.
13 A Pittsburgh, PA.
14 A Baltimore, MD.
15 A Minneapolis, MN/WI.
16 A Cleveland, Ohio.
17 A Atlanta, Georgia.
18 A San Diego, California.
19 A Denver, Colorado.
20 A Seattle-Everett, WA.
21 A Milwaukee, WI.
22 A Tampa, Florida.
23 A Cincinnati, Ohio.
24 A Kansas City, MO/KS.
25 A Buffalo, New York.
26 A Phoenix, Arizona.
27 A San Jose, California.

March 17, 1993
28 A Indianapolis, Indiana.
29 A New Orleans, Louisiana.
30 A Portland, OR/WA.
31 A Columbus, Ohio.
32 A Hartford, CT.
33 A San Antonio, TX.
34 A Rochester, NY.

733 B American Samoa.
1 B New York, NY.
2 B Los Angeles, CA.
3 B Chicago, Illinois.
4 B Philadelphia, PA.
5 B Detroit, Michigan.
6 B Boston, MA.
7 B San Francisco, CA.
8 B Washington, DC.
9 B Dallas, Texas.
10 B Houston, Texas.
11 B St. Louis, MO/IL.
12 B Miami, Florida.
13 B Pittsburgh, PA.
14 B Baltimore, MD.
15 B Minneapolis, MN/WI.
16 B Cleveland, OH.
17 B Atlanta, Georgia.
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21 B Milwaukee, WI.
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31 B Columbus, Ohio.
32 B Hartford, CT.
33 B San Antonio, TX.
34 B Rochester, NY.

35 A Sacramento, CA.
36 A Memphis, TN/AR/MS.
37 A Louisville, KY/IN.
38 A Providence, RI/MA.
39 A Salt Lake City-Ogden, UT.
40 A Dayton, Ohio.
41 A Birmingham, AL.
42 A Bridgeport, CT.
43 A Norfolk, VA/NC.
44 A Albany, New York.
45 A Oklahoma City, OK.
46 A Nashville, TN.
47 A Greensboro, NC.
48 A Toledo, OH/MI.
49 A New Haven, CT.
50 A Honolulu, Hawaii.
51 A Jacksonville, FL.
52 A Akron, Ohio.
53 A Syracuse, NY.
54 A Gary, IN
55 A Worcester, MA.
56 A Northeast Pennsylvania, PA.
57 A Tulsa, OK ..

March 24, 1993
58 A Allentown, PA/NJ.
59 A Richmond, VA.
60 A Orlando, FL.
61 A Charlotte, NC.
62 A New Brunswick, NJ.
63 A Springfield, MA.
64 A Grand Rapids, MI.
65 A Omaha, NE/IA.
66 A Youngstown, Ohio.
67 A Greenville-Spartanburg, SC.
68 A Flint, Michigan.
69 A Wilmington, DE/NJ/MD.
70 A Long Branch, NJ.

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Acceptance of Applications for Cellular Unserved Areas—Continued

35 A Sacramento, CA.
36 A Memphis, TN/AR/MS.
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54 B Gary, IN.
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56 B Northeast Pennsylvania, PA.
57 B Tulsa, OK.

Acceptance of Applications for
Cellular Unserved Areas—Continued

71 A Raleigh-Durham, NC.	71 B Raleigh-Durham, NC.
72 A West Palm Beach, FL.	72 B West Palm Beach, FL.
73 A Oxnard, CA	73 B Oxnard, CA.
74 A Fresno, CA	74 B Fresno, CA.
75 A Austin, TX	75 B Austin, TX.
76 A New Bedford, MA.	76 B New Bedford, MA.
77 A Tucson, AZ	77 B Tucson, AZ.
78 A Lansing, MI	78 B Lansing, MI.
79 A Knoxville, TN.	79 B Knoxville, TN.
80 A Baton Rouge, LA.	80 B Baton Rouge, LA.
81 A El Paso, TX	81 B El Paso, TX.
82 A Tacoma, WA.	82 B Tacoma, WA.
83 A Mobile, AL	83 B Mobile, AL.
84 A Harrisburg, PA.	84 B Harrisburg, PA.
85 A Johnson City, TN/VA.	85 B Johnson City, TN/VA.
86 A Albuquerque, NM.	86 B Albuquerque, NM.
87 A Canton, Ohio.	87 B Canton, Ohio.
March 31, 1993	
88 A Chattanooga, TN/GA.	88 B Chattanooga, TN/GA.
89 A Wichita, Kansas.	89 B Wichita, Kansas.
90 A Charleston, SC.	90 B Charleston, SC.
91 A San Juan-Caguas, PR.	91 B San Juan-Caguas, PR.
92 A Little Rock, AR.	92 B Little Rock, AR.
93 A Las Vegas, NV.	93 B Las Vegas, NV.
94 A Saginaw, MI.	94 B Saginaw, MI.
95 A Columbia, SC.	95 B Columbia, SC.
96 A Fort Wayne, IN.	96 B Fort Wayne, IN.
97 A Bakersfield, CA.	97 B Bakersfield, CA.
98 A Davenport, IA/IL.	98 B Davenport, IA/IL.
99 A York, PA.	99 B York, PA.
100 A Shreveport, LA.	100 B Shreveport, LA.
101 A Beaumont, TX.	101 B Beaumont, TX.
102 A Des Moines, IA.	102 B Des Moines, IA.
103 A Peoria, IL ...	103 B Peoria, IL.
104 A Newport News-Hampton, VA.	104 B Newport News-Hampton, VA.
105 A Lancaster, PA.	105 B Lancaster, PA.
106 A Jackson, MS.	106 B Jackson, MS.
107 A Stockton, CA.	107 B Stockton, CA.

Acceptance of Applications for
Cellular Unserved Areas—Continued

108 A Augusta, GA/SC.	108 B Augusta, GA/SC.
109 A Spokane, WA.	109 B Spokane, WA.
110 A Huntington, WV/KY/OH.	110 B Huntington, WV/KY/OH.
111 A Vallejo-Fairfield-Napa, CA.	111 B Vallejo-Fairfield-Napa, CA.
112 A Corpus Christi, TX.	112 B Corpus Christi, TX.
113 A Madison, WI.	113 B Madison, WI.
114 A Lakeland, FL.	114 B Lakeland, FL.
115 A Utica-Rome, NY.	115 B Utica-Rome, NY.
116 A Lexington, KY.	116 B Lexington, KY.
117 A Colorado Springs, CO.	117 B Colorado Springs, CO.
April 7, 1993	
118 A Reading, PA.	118 B Reading, PA.
119 A Evansville, IN/KY.	119 B Evansville, IN/KY.
120 A Huntsville, AL.	120 B Huntsville, AL.
121 A Trenton, NJ	121 B Trenton, NJ.
122 A Binghamton, NY.	122 B Binghamton, NY.
123 A Santa Rosa-Petaluma, CA.	123 B Santa Rosa-Petaluma, CA.
124 A Santa Barbara, CA.	124 B Santa Barbara, CA.
125 A Appleton, WI.	125 B Appleton, WI.
126 A Salinas, CA	126 B Salinas, CA.
127 A Pensacola, FL.	127 B Pensacola, FL.
128 A McAllen, TX.	128 B McAllen, TX.
129 A South Bend-Mishawaka, IN.	129 B South Bend-Mishawaka, IN.
130 A Erie, PA	130 B Erie, PA.
131 A Rockford, IL.	131 B Rockford, IL.
132 A Kalamazoo, MI.	132 B Kalamazoo, MI.
133 A Manchester-Nashua, NH.	133 B Manchester-Nashua, NH.
134 A Atlantic City, NJ.	134 B Atlantic City, NJ.
135 A Eugene-Springfield, OR.	135 B Eugene-Springfield, OR.
136 A Lorain-Elyria, OH.	136 B Lorain-Elyria, OH.
137 A Melbourne, FL.	137 B Melbourne, FL.
138 A Macon-Warner Robins, GA.	138 B Macon-Warner Robins, GA.
139 A Montgomery, AL.	139 B Montgomery, AL.
140 A Charleston, WV.	140 B Charleston, WV.
141 A Duluth, NM-WI.	141 B Duluth, MN-WI.

Acceptance of Applications for
Cellular Unserved Areas—Continued

142 A Modesto, CA.	142 B Modesto, CA.
143 A Johnstown, PA.	143 B Johnstown, PA.
144 A Orange County, NY.	144 B Orange County, NY.
145 A Hamilton-Middletown, OH.	145 B Hamilton-Middletown, OH.
146 A Daytona Beach, FL.	146 B Daytona Beach, FL.
147 A Ponce, Puerto Rico.	147 B Ponce, Puerto Rico.
148 A Salem, OR .	148 B Salem, OR.
April 14, 1993	
149 A Fayetteville, NC.	149 B Fayetteville, NC.
150 A Visalia, CA	150 B Visalia, CA.
151 A Poughkeepsie, NY.	151 B Poughkeepsie, NY.
152 A Portland, Maine.	152 B Portland, ME.
153 A Columbus, GA/AL.	153 B Columbus, GA/AL.
154 A New London-Norwich, CT/RI.	154 B New London-Norwich, CT/RI.
155 A Savannah, GA.	155 B Savannah, GA.
156 A Portsmouth, NH.	156 B Portsmouth, NH.
157 A Roanoke, VA.	157 B Roanoke, VA.
158 A Lima, Ohio	158 B Lima, Ohio.
159 A Provo-Orem, Utah.	159 B Provo-Orem, Utah.
160 A Killeen-Temple, TX.	160 B Killeen-Temple, TX.
161 A Lubbock, Texas.	161 B Lubbock, Texas.
162 A Brownsville-Harlingen, TX.	162 B Brownsville-Harlingen, TX.
163 A Springfield, MO.	163 B Springfield, MO.
164 A Fort Myers, FL.	164 B Fort Myers, FL.
165 A Fort Smith, AR/OK.	165 B Fort Smith, AR/OK.
166 A Hickory, NC.	166 B Hickory, NC.
167 A Sarasota, FL.	167 B Sarasota, FL.
168 A Tallahassee, FL.	168 B Tallahassee, FL.
169 A Mayaguez, Puerto Rico.	169 B Mayaguez, Puerto Rico.
170 A Galveston, TX.	170 B Galveston, TX.
171 A Reno, Nevada.	171 B Reno, Nevada.
172 A Lincoln, Nebraska.	172 B Lincoln, Nebraska.
173 A Biloxi-Gulfport, MS.	173 B Biloxi-Gulfport, MS.
174 A Lafayette, LA.	174 B Lafayette, LA.
175 A Santa Cruz, CA.	175 B Santa Cruz, CA.
176 A Springfield, IL.	176 B Springfield, IL.
177 A Battle Creek, MI.	177 B Battle Creek, MI.

Acceptance of Applications for
Cellular Unserved Areas—Continued

178 A Wheeling, WV/OH.
179 A Topeka, Kansas.
April 21, 1993
180 A Springfield, OH.
181 A Muskegon, Michigan.
182 A Fayetteville, AR.
183 B Asheville, NC.
184 A Houma-Thibodaux, LA.
185 A Terre Haute, IN.
186 A Green Bay, WI.
187 A Anchorage, AK.
188 A Amarillo, TX.
189 A Racine, WI.
190 A Boise City, ID.
191 A Yakima, WA.
192 A Gainesville, FL.
194 A Waco, TX.
195 A Cedar Rapids, IA.
196 A Champaign, IL.
197 A Lake Charles, LA.
200 A Parkersburg, OH/WV.
201 A Waterloo-Cedar Falls, IA.
204 A Aguadilla, Puerto Rico.
206 A Longview-Marshall, TX.
208 A Fort Pierce, FL.
209 A Clarksville, TN/KY.
April 28, 1993
210 A Fort Collins, CO.
211 A Bradenton, FL.
212 A Bremerton, WA.
213 A Pittsfield, MA.

178 B Wheeling, WV/OH.
179 B Topeka, Kansas.
180 B Springfield, OH.
181 B Muskegon, Michigan.
182 B Fayetteville, AR.
183 B Asheville, NC.
184 B Houma-Thibodaux, LA.
185 B Terre Haute, IN.
186 B Green Bay, WI.
187 B Anchorage, AK.
188 B Amarillo, TX.
189 B Racine, WI.
190 B Boise City, ID.
191 B Yakima, WA.
192 B Gainesville, FL.
193 B Benton Harbor, MI.
194 B Waco, TX.
195 B Cedar Rapids, IA.
196 B Champaign, IL.
197 B Lake Charles, LA.
198 B St. Cloud, MN.
199 B Steubenville, OH/WV.
200 B Parkersburg, OH/WV.
201 B Waterloo-Cedar Falls, IA.
202 B Arecibo, Puerto Rico.
203 B Lynchburg, VA.
204 B Aguadilla, Puerto Rico.
205 B Alexandria, LA.
206 B Longview-Marshall, TX.
207 B Jackson, MI.
208 B Fort Pierce, FL.
209 B Clarksville, TN/KY.
210 B Fort Collins, CO.
211 B Bradenton, FL.
212 B Bremerton, WA.
213 B Pittsfield, MA.

Acceptance of Applications for
Cellular Unserved Areas—Continued

215 A Chico, CA.
216 A Janesville, WI.
218 A Wilmington, NC.
220 A Abilene, TX.
222 A Tuscaloosa, AL.
223 A Elkhart-Goshen, IN.
224 A Bangor, ME.
225 A Altoona, PA.
226 A Florence, AL.
227 A Anderson, SC.
228 A Vineland, NJ.
229 A Medford, OR.
230 A Decatur, IL.
231 A Mansfield, OH.
233 A Wichita Falls, TX.
234 A Athens, GA.
235 A Petersburg, VA.
236 A Muncie, IN.
237 A Tyler, TX.
238 A Sharon, PA.
239 A Joplin, MO.
240 A Texarkana, TX/AR.
May 5, 1993
241 A Pueblo, CO.
242 A Olympia, WA.
243 A Greeley, CO.
244 A Kenosha, WI.
245 A Ocala, FL.
246 A Dothan, AL.
247 A Lafayette, IN.
249 A Anniston, AL.
253 A Sioux City, IA/NE.

214 B Richland, WA.
215 B Chico, CA.
216 B Janesville, WI.
217 B Anderson, IN.
218 B Wilmington, NC.
219 B Monroe, LA.
220 B Abilene, TX.
221 B Fargo, ND/MN.
222 B Tuscaloosa, AL.
223 B Elkhart-Goshen, IN.
224 B Bangor, ME.
225 B Altoona, PA.
226 B Florence, AL.
227 B Anderson, SC.
228 B Vineland, NJ.
229 B Medford, OR.
231 B Mansfield, OH.
232 B Eau Claire, WI.
233 B Wichita Falls, TX.
234 B Athens, GA.
235 B Petersburg, VA.
236 B Muncie, IN.
237 B Tyler, TX.
238 B Sharon, PA.
239 B Joplin, MO.
240 B Texarkana, TX/AR.
241 B Pueblo, CO.
242 B Olympia, WA.
243 B Greeley, CO.
244 B Kenosha, WI.
245 B Ocala, FL.
246 B Dothan, AL.
247 B Lafayette, IN.
248 B Burlington, VT.
249 B Anniston, AL.
251 B Williamsport, PA.
252 B Pascagoula, MS.
253 B Sioux City, IA/NE.

Acceptance of Applications for
Cellular Unserved Areas—Continued

254 A Redding, CA.
255 A Odessa, TX.
258 A Jacksonville, NC.
259 A State College, PA.
260 A Lawton, OK.
261 A Albany, GA.
262 A Danville, VA.
263 A Wausau, WI.
264 A Florence, SC.
265 A Fort Walton Beach, FL.
266 A Glens Falls, NY.
267 A Sioux Falls, SD.
268 A Billings, Montana.
269 A Cumberland, MD/WV.
270 A Bellingham, WA.
272 A Gadsden, AL.
273 A Kankakee, IL.
274 A Yuba City, CA.
May 12, 1993
275 A St. Joseph, MO.
276 A Grand Forks, ND.
279 A Lewiston-Auburn, ME.
281 A Laredo, TX.
282 A Bloomington, IN.
283 A Panama City, FL.
284 A Elmira, NY.
285 A Las Cruces, NM.
286 A Dubuque, IA.
287 A Bryan-College Station, TX.
288 A Rochester, MN.
289 A Rapid City, SD.
290 A La Crosse, WI.

254 B Redding, CA.
255 B Odessa, TX.
256 B Charlottesville, VA.
258 B Jacksonville, NC.
259 B State College, PA.
260 B Lawton, OK.
261 B Albany, GA.
262 B Danville, VA.
263 B Wausau, WI.
264 B Florence, SC.
265 B Fort Walton Beach, FL.
266 B Glens Falls, NY.
267 B Sioux Falls, SD.
268 B Billings, Montana.
270 B Bellingham, WA.
271 B Kokomo, IN.
272 B Gadsden, AL.
273 B Kankakee, IL.
274 B Yuba City, CA.
275 B St. Joseph, MO.
276 B Grand Forks, ND.
277 B Sheboygan, WI.
278 B Columbia, MO.
279 B Lewiston-Auburn, ME.
280 B Burlington, NC.
281 B Laredo, TX.
282 B Bloomington, IN.
283 B Panama City, FL.
284 B Elmira, NY.
285 B Las Cruces, NM.
286 B Dubuque, IA.
287 B Bryan-College Station, TX.
288 B Rochester, MN.
289 B Rapid City, SD.
290 B La Crosse, WI.

Acceptance of Applications for Cellular Unserved Areas—Continued

291 A Pine Bluff, AR.	292 B Sherman-Denison, TX.
292 A Sherman-Denison, TX.	293 B Owensboro, KY.
293 A Owensboro, KY.	294 B San Angelo, TX.
294 A San Angelo, TX.	295 B Midland, TX.
296 A Iowa City, IA.	296 B Iowa City, IA.
297 A Great Falls, MT.	297 B Great Falls, MT.
298 A Bismarck, ND.	298 B Bismarck, ND.
300 A Victoria TX.	299 B Casper, WY.
301 A Lawrence, KS.	300 B Victoria, TX.
303 A Aurora-Elgin, IL.	301 B Lawrence, KS.
304 A Joliet, IL.	302 B Enid, OK.
305 A Alton-Granite City, IL.	303 B Aurora-Elgin, IL.
306 A Gulf of Mexico.	304 B Joliet, IL.
	305 B Alton-Granite City, IL.
	306 B Gulf of Mexico.

[FR Doc. 92-31611 Filed 12-29-92; 8:45 am]
BILLING CODE 6712-01-M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, city, and state	File No.	MM dock- et No.
A. John M. Giannettino, Burlington, IA.	BPH-910719MA	92-302
B. John T. Pritchard, Burlington, IA.	BPH-910722MI	

Issue Heading and Applicants

- Environmental, A, B
- Comparative, A, B
- Ultimate, A, B

II.

Applicant, city, and state	File No.	MM dock- et No.
A. Skyline Broadcasters, Inc., Kallispell, MT.	BPH-910925MD	92-303
B. Tom Seabase, Kallispell, MT.	BPH-910926MB	
C. Cloud Nine Broadcasting, Inc., Kallispell, MT.	BPH-910926MI	

Issue Heading and Applicants

- Comparative, A, B, C
- Ultimate, A, B, C

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth above. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used above to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, room 246, 1919 M Street, NW., Washington, DC 20554 (telephone (202)-659-8657).

W. Jan Gay,

Assistant Chief, Audio Services Division,
Mass Media Bureau.

[FR Doc. 92-31608 Filed 12-29-92; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed; Puerto Rico Ports Authority, et al.

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at

the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-200152-002.

Title: Puerto Rico Ports Authority/Island Stevedoring, Inc. Terminal Agreement.

Parties: Puerto Rico Ports Authority; Island Stevedoring, Inc.

Filing Party: Myra N. Cruz Alvarez, Contract Supervisor, Puerto Rico Ports Authority, P.O. Box 362829, San Juan, Puerto Rico 00936-2829.

Synopsis: This modification provides for the cancellation of Supplementary Agreement number (A-1) AP-88-89-(4)-021. All terms and conditions of the original Agreement remain unchanged.

By Order of the Federal Maritime Commission.

Dated: December 24, 1992.

Joseph C. Polking,
Secretary.

[FR Doc. 92-31675 Filed 12-29-92; 8:45 am]

BILLING CODE 6730-01-M

Port of Palm Beach District and Birdsall, Inc., Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No: 224-004174-004.

Title: Port of Palm Beach District and Birdsall, Inc., Terminal Leasing Agreement.

Parties:
The Port of Palm Beach District
Birdsall, Inc.

Synopsis: The Agreement changes the minimum annual wharfage charge to 775,000 short tons per calendar year and prorates the required minimum for January, 1994.

Agreement No: 224-20027-002.

Title: Jackson County Port Authority (Port of Pascagoula)/Ryan Walsh, Inc. Terminal Agreement.

Parties:

Jackson County Port Authority
Ryan Walsh, Inc.

Synopsis: This modification provides for a reduction in the rental on Terminals "E & F" for the calendar year beginning January 1, 1993.

Agreement No.: 224-000180-002.

Title: Jackson County Port Authority (Port of Pascagoula)/Ryan Walsh, Inc. Terminal Agreement.

Parties:

Jackson County Port Authority
Ryan Walsh, Inc.

Synopsis: This modification provides for a reduction in the rental on Terminals "G & H" for the calendar year beginning January 1, 1993.

Agreement No.: 203-011394.

Title: Orient Overseas Container Line (U.K.) Ltd. and The VSA Party Space Charter and Sailing Agreement.

Parties:

Orient Overseas Container Line (U.K.) Ltd. ("OOCL")

Sea-Land Service, Inc.*

P&O Containers Ltd.*

Nedlloyd Lijnen B.V.*

*The VSA Party

Synopsis: The proposed Agreement permits OOCL and the VSA Party to charter vessels and vessel space among themselves, to agree on sailing schedules and vessel deployments, and to agree, on a voluntary basis, upon rates and service contracts. The Agreement trade is between U.S. Atlantic and Gulf Coast ports, and inland points via those ports, and ports in North Europe (including the United Kingdom and the Republic of Ireland) and points in Europe via such ports.

Agreement No.: 203-011395.

Title: A.P. Moller-Maersk Line and The VSA Party Space Charter and Sailing Agreement.

Parties:

A.P. Moller-Maersk Line ("Maersk")

Sea-Land Service, Inc.*

P&O Containers Limited*

Nedlloyd Lijnen B.V.*

*The VSA Party

Synopsis: The proposed Agreement permits Maersk and The VSA party to agree upon terms and conditions by which Maersk may make space aboard its vessels available to the members of the VSA Party for their use and for subcharter by them to Orient Overseas Line (U.K.) Ltd. It also allows the parties to agree upon deployment changes regarding Maersk's vessels, sailing schedules, port calls and port rotations and to agree, on a voluntary basis, on rates and service contracts in the trade between U.S. Atlantic and Gulf Coasts ports, and inland points via those ports, and ports in North Europe (including the United Kingdom and the Republic of

Ireland) and points in Europe via such ports.

Agreement No.: 203-011396.

Title: Maersk, OOCL, VSA

Cooperative Working Agreement.

Parties:

Orient Overseas Container Line (U.K.) Ltd.

A.P. Moller-Maersk Line

Sea-Land Service, Inc.*

P&O Containers, Ltd.*

Nedlloyd Lijnen B.V.*

*The VSA Party

Synopsis: The proposed Agreement permits the parties to discuss and agree upon matters involving deployment of vessels and their potential charter among the parties, vessel schedules, port calls, terminal use and to agree, on a voluntary basis, on rates and service contracts in the trade between U.S. Atlantic and Gulf Coasts ports, and inland points via those ports, and ports in North Europe (including the United Kingdom and the Republic of Ireland) and points in Europe via such ports.

Dated: December 24, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-31690 Filed 12-29-92; 8:45 am]

BILLING CODE 4730-01-M

Atlantic and Gulf/West Coast of South America Conference Agreement, et al.; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-002744-068.

Title: Atlantic and Gulf/West Coast of South America Conference Agreement.

Parties: Compania Chilena De Navegacion Interoceania, S.A., Compania Sud Americana De Vapores, Lykes Bros. Steamship Co., Inc., Nedlloyd Lines, Flota Mercante

Grancolombiana, S.A., Lineas Navieras Bolivianas S.A.M., Naviera Neptuno, S.A.

Synopsis: The Agreement proposes to amend Article 13, Independent Action, to permit a member line to take independent action on one (1) business day notice. The parties have requested a shortened review period.

Agreement No.: 224-003089-003.

Title: Port of Palm Beach District and Birdsall, Inc., Lease Agreement.

Parties: The Port of Palm Beach District, Birdsall, Inc.

Synopsis: The modification extends the renewal term of the Agreement to April 1, 1993.

Agreement No.: 203-011330-001.

Title: Information System Agreement. **Parties:** American President Lines, Ltd., A.P. Moller-Maersk Line, P&O Containers Limited, Sea-Land Service, Inc.

Synopsis: The Agreement proposes to provide for an admission fee for joining the Agreement and to establish annual dues. It also adds new provisions to Article 8, Voting, establishing an executive committee for the Agreement and clarifying existing voting procedures.

Dated: December 24, 1992.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 92-31700 Filed 12-29-92; 8:45 am]

BILLING CODE 4730-01-M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Chesapeake Bay Shipping and Warehousing, Inc., 1100 Wilso Drive, Baltimore, MD 21233; Officers: James F. Lewis, President, Genevieve A. Szczepanik, Vice President

USA Forwarding Inc., 1465 Judson Ave., Long Beach CA 90813; Officers: Daisy Wong, President/Director, Ben Guan, Sales Manager & Corporate Ofc.

G&H International Corp., 8360 W. Flagler Street, Ste. 201-B, Miami, FL 33144; Officer: Hector J. Vega, President

Aero-Mar Cargo, Inc., 7225 N.W. 25th Street, # 310, Miami, FL 33122; Officers: Lillian

M. Brito, President, Jorge L. Brito,
Secretary/Treasurer

OPT Overseas Project Transport, Inc., 46
Sellers Street, Kearny, NJ 07032; Officers:
Dr. Michael Hoenig, Director/President,
Hans Von Goetz, Vice President/Treasurer,
Dietmar Jakobus, Secretary

Princess Forwarding, Inc., 668 Elmore Park,
Lexington, KY 40508; Officers: Kathryn A.
Moussa, President, George Stanley Moussa,
Vice President

Vialoma Trading Corp., 3124 N.W. 72nd
Avenue, Miami, FL 33122; Officers:
Catalina Ramirez, President, Alessio
Vasquez Ramirez, Vice President, Marisol
Vasquez Ramirez, Treasurer

Caribe Transport Consolidators, Inc., 9515
N.W. 13th Street, Miami, FL 33172;
Officers: Jorge Andreas Colon, President,
Lissette M. Colon, Vice President

SCL Shipping (USA) Inc., 150-30 132nd
Ave., Room-208, Jamaica, NY 11434;
Officers: Derek Chan, Director/President,
Dennis Choy, Vice President, Carol Chan,
Secretary/Director

Fumihito Saito, 3321 Hackett Ave., Long
Beach, CA 90808, Sole Proprietor

Lee's Material Services, Inc., 5810 Star Lane,
Houston, TX 77057; Officers: Patricia
Maxine Lee, President/Secretary/Treasurer,
Robert Rye Lee, Vice President
Dated: December 24, 1992.

By the Federal Maritime Commission.

Joseph C. Polking,
Secretary.

[FR Doc. 92-31676 Filed 12-29-92; 8:45 am]
BILLING CODE 0730-01-M

FEDERAL RESERVE SYSTEM

Scott M. Browning, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have
applied under the Change in Bank
Control Act (12 U.S.C. 1817(j)) and §
225.41 of the Board's Regulation Y (12
CFR 225.41) to acquire a bank or bank
holding company. The factors that are
considered in acting on the notices are
set forth in paragraph 7 of the Act (12
U.S.C. 1817(j)(7)).

The notices are available for
immediate inspection at the Federal
Reserve Bank indicated. Once the
notices have been accepted for
processing, they will also be available
for inspection at the offices of the Board
of Governors. Interested persons may
express their views in writing to the
Reserve Bank indicated for that notice
or to the offices of the Board of
Governors. Comments must be received
not later than January 19, 1993.

**A. Federal Reserve Bank of San
Francisco** (Kenneth R. Binning,
Director, Bank Holding Company) 101

Market Street, San Francisco, California
94105:

1. **Scott M. Browning, San Diego,**
California, Gay Browning, Ogden, Utah,
and Diane Browning Oblock, River
Heights, Utah; to acquire 27.36 percent
each of the voting shares of First Utah
Bancorporation, Salt Lake City, Utah,
and thereby indirectly acquire First
Utah Bank, Salt Lake City, Utah.

Board of Governors of the Federal Reserve
System, December 23, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-31723 Filed 12-29-92; 8:45 am]
BILLING CODE 6210-01-F

First Colonial Bankshares Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice
have applied for the Board's approval
under section 3 of the Bank Holding
Company Act (12 U.S.C. 1842) and §
225.14 of the Board's Regulation Y (12
CFR 225.14) to become a bank holding
company or to acquire a bank or bank
holding company. The factors that are
considered in acting on the applications
are set forth in section 3(c) of the Act
(12 U.S.C. 1842(c)).

Each application is available for
immediate inspection at the Federal
Reserve Bank indicated. Once the
application has been accepted for
processing, it will also be available for
inspection at the offices of the Board of
Governors. Interested persons may
express their views in writing to the
Reserve Bank or to the offices of the
Board of Governors. Any comment on
an application that requests a hearing
must include a statement of why a
written presentation would not suffice
in lieu of a hearing, identifying
specifically any questions of fact that
are in dispute and summarizing the
evidence that would be presented at a
hearing.

Unless otherwise noted, comments
regarding each of these applications
must be received not later than January
22, 1993.

A. Federal Reserve Bank of Chicago
(David S. Epstein, Vice President) 230
South LaSalle Street, Chicago, Illinois
60690:

1. **First Colonial Bankshares
Corporation, Chicago, Illinois;** to
acquire 100 percent of the voting shares
of GNP Bancorp Inc., Mundelein,
Illinois, and thereby indirectly acquire
New Century Bank, Mundelein, Illinois.

2. **First Colonial Bankshares
Corporation, Chicago, Illinois;** to
acquire 100 percent of the voting shares

of Hi-Bancorp, Inc., Highwood, Illinois,
and thereby indirectly acquire Bank of
Highwood, Highwood, Illinois.

Board of Governors of the Federal Reserve
System, December 23, 1992.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 92-31721 Filed 12-29-92; 8:45 am]
BILLING CODE 6210-01-F

Mellon Bank Corporation, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice
have applied under § 225.14 of the
Board's Regulation Y (12 CFR 225.14)
for the Board's approval under section
3 of the Bank Holding Company Act (12
U.S.C. 1842) (BHC Act) to become a
bank holding company or to acquire
voting securities of a bank or bank
holding company. The listed companies
have also applied under § 225.23(a)(2)
of Regulation Y (12 CFR 225.23(a)(2)) for
the Board's approval under section
4(c)(8) of the BHC Act (12 U.S.C.
1843(c)(8)) and § 225.21(a) of Regulation
Y (12 CFR 225.21(a)) to acquire or
control voting securities or assets of a
company engaged in a nonbanking
activity. The listed companies have also
applied under § 225.23(a)(3) of
Regulation Y (12 CFR 225.23(a)(3)) to
acquire or control voting securities of a
company engaged in a nonbanking
activity. Unless otherwise noted, these
activities will be conducted throughout
the United States.

The applications are available for
immediate inspection at the Federal
Reserve Bank indicated. Once the
applications have been accepted for
processing, they will also be available
for inspection at the offices of the Board
of Governors. Interested persons may
express their views in writing on the
question whether consummation of the
proposal can "reasonably be expected to
product benefits to the public, such as
greater convenience, increased
competition, or gains in efficiency, that
outweigh possible adverse effects, such
as undue concentration of resources,
decreased or unfair competition,
conflicts of interests, or unsound bank
practices."

Comments regarding each of these
applications should be submitted in
writing and received by William W.
Wiles, Secretary, Board of Governors of
the Federal Reserve System,
Washington, DC 20551, not later than
January 22, 1993. Any request for a
hearing on these applications must, as
required by § 262.3(e) of the Board's

Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Mellon Bank Corporation*, Pittsburgh, Pennsylvania; to acquire 100 percent of the voting shares of Boston Group Holdings, Inc., New York, New York, and thereby indirectly acquire The Boston Company, Inc., and Boston Safe Deposit and Trust Company, both of Boston, Massachusetts.

2. *Boston Group Holdings, Inc.*, New York, New York; to become a bank holding company through its retention of 100 percent of the voting shares of The Boston Company, Inc., Boston, Massachusetts, the parent company of Boston Safe Deposit and Trust Company, Boston, Massachusetts.

3. *The Boston Company, Inc.*, Boston, Massachusetts; to become a bank holding company through the retention of 100 percent of the voting shares of Boston Safe Deposit and Trust Company, Boston, Massachusetts.

In connection with these applications, Mellon Bank Corporation (Applicant) proposes to acquire indirectly The Boston Finance Company, Boston, Massachusetts, and thereby engage in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y; and to acquire indirectly Boston Safe Deposit and Trust Company of California, Los Angeles, California; and Boston Safe Deposit and Trust Company of New York, New York, New York, and thereby engage in providing trust services pursuant to § 225.25(b)(3) of the Board's Regulation Y; and to acquire indirectly The Boston Company Advisors, Inc., Boston, Massachusetts; The Boston Company Institutional Investors, Inc., Boston, Massachusetts; The Boston Company of Southern California, Los Angeles, California; Boston Hambro Corp., New York, New York; The Boston Company Financial Strategies Group, Inc., Boston, Massachusetts; The Boston Company Financial Strategies, Inc., Boston, Massachusetts; The Boston Company Income Securities Advisors, Inc., Boston, Massachusetts; The Boston Company Energy Advisors, Inc., Boston, Massachusetts; and thereby engage in providing investment advisory services pursuant to § 225.25(b)(4) of the Board's

Regulation Y; and to acquire indirectly The Boston Company Real Estate Counsel Inc., Boston, Massachusetts, and thereby provide trust services and investment advisory services pursuant to §§ 225.25(b)(3) and (4) of the Board's Regulation Y.

In addition, Applicant has applied under section 4(c)(8) of the BHC Act and § 225.23(a) of the Board's Regulation Y to engage, through the companies in which Applicant proposes to engage in investment advisory activities (Company), in (1) the provision of administrative services to mutual funds and (2) the provision of administrative services and investment advisory services on a combined basis to a mutual fund.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, "closely related to banking." Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

Based on the guidelines established in *National Courier Association v. Board of Governors of the Federal Reserve System*, 516 F.2d 1229, 1237 (D.C. Cir. 1975), a particular activity may be found to meet the "closely related to banking" test if it is demonstrated that (1) banks generally have in fact provided the proposed activity; (2) banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or (3) banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. The *National Courier* guidelines are not, however, the exclusive basis for finding a proposed activity closely related to banking, and the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking.

Applicant has stated that the furnishing of administrative services to a mutual fund includes, among other things, preparing and filing securities registration statements, providing legal

advice and accounting services, preparing tax returns, preparing and filing various financial and operating reports pertaining to the fund, and maintaining the records of the fund. In addition, in some circumstances, at least one officer and/or director of each fund to which Company provides administrative services would be an employee of Company or one of its affiliates.

Applicant believes that the proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto." Applicant believes the proposed administrative services are permissible under section 225.25(b)(4) of the Board's Regulation Y (12 CFR 225.25(b)(4)), which allows a bank holding company to serve as an "investment adviser," as that term is defined in section 2(a)(20) of the Investment Company Act of 1940 (1940 Act). Applicant states that these administrative services are also authorized under section 225.25(b)(3) of Regulation Y (12 CFR 225.25(b)(3)), which permits serving in such capacities as transfer agent, custodian, and registrar to a mutual fund. See 12 CFR 225.125(i). Applicant states that the 1940 Act permits investment advisers to provide the administrative services Applicant proposes to provide. Applicant notes that Board orders and the Board Interpretation regarding investment adviser activities do not indicate that the provision of administrative services is impermissible. Applicant also believes that many of the proposed administrative services constitute data processing and tax preparation services that are permissible under sections 225.25(b)(7) and (21) of Regulation Y (12 CFR 225.25(b)(7) and (21)). Finally, Applicant states that banks and bank holding companies have been authorized to engage in activities similar to the ones proposed by Applicant, such as providing combined investment advisory and administrative services to an employee benefit plan and operating a benefits consulting firm.

Applicant also states that the proposed activities comply with provisions of the Glass-Steagall Act. In particular, Applicant states that the proposed activities comply with section 20 of the Glass-Steagall Act, which prohibits the affiliation of a member bank with a company, such as an investment company, engaged principally in the issue of securities. In this regard, Applicant argues that Company's provision of administrative services to a mutual fund and the presence of director and officer

interlocks will not cause Company to control Company's mutual fund clients. Accordingly, Applicant argues that neither Company nor its member bank affiliates would become an affiliate of a mutual fund in violation of the Glass-Steagall Act.

Applicant maintains that the proposed activities will benefit the public. Applicant believes that it will promote competition and provide added convenience to customers of Company and gains in efficiency. Moreover, Applicant believes that these benefits will outweigh any possible adverse effects of the proposed activities and that indeed, no adverse effects are currently foreseen.

These applications may be inspected at the offices of the Federal Reserve Bank of Cleveland.

Board of Governors of the Federal Reserve System, December 23, 1992.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 92-31722 Filed 12-29-92; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Information Collection Activities Under Office of Management and Budget Review

AGENCY: Committee Management Secretariat (CM), GSA.

SUMMARY: The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that is requesting the Office of Management and Budget (OMB) to approve information collection, Questionnaire for Potential Members—Appointments by the Administrator of General Services to the Citizens' Commission on Public Service and Compensation. This Information Collection is used to determine the eligibility of potential candidates and alternate members for appointment by the Administrator of General Services to the Citizens' Commission on Public Service and Compensation, as required by section 701(b) of title VII of the Ethics Reform Act of 1989 (2 U.S.C. 352).

ADDRESSES: Send comments to Ed Springer, GSA Desk Officer, room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), 18th & F Street, NW., Washington, DC 20405.

Annual Reporting Burden:

Respondents: 500; annual responses: 500; average hours per response: 1; burden hours: 500.

FOR FURTHER INFORMATION CONTACT:
Charles F. Howton, (202) 632-1131.

Copy of Proposal: May be obtained from the Information Collection Management Branch (CAIR), 7102, GSA Building, 18th & F St., NW., Washington, DC 20405, by telephoning (202) 501-2691, or by faxing your request to (202) 501-2727.

Dated: December 17, 1992.

Charles R. Demers,
Acting Director, Information Management Division.

[FR Doc. 92-31685 Filed 12-29-92; 8:45 am]

BILLING CODE 6820-34-M

Finding of No Significant Impacts Following Completion of Environmental Assessment for the Proposed Federal Courthouse Facility, Located in Portland, OR

AGENCY: General Services Administration.

ACTION: Withdrawal of intention to prepare environmental impact Statement (EIS), for action which normally would require an EIS.

SUMMARY: The General Services Administration (GSA) hereby gives notice that following scoping meetings it was decided that an EIS was not required for the proposed Federal Courthouse building in Portland, Oregon. An Environmental Assessment was prepared and based on it the Regional Administrator, Region 10, has issued a Finding of No Significant Impact. The project will provide a total occupiable area of approximately 340,000 square feet and will house approximately 1027 employees of the Courts and other agencies. The project will also provide 200 official, visitor and employee parking spaces. The building will be constructed to meet the Courts current needs and to accommodate its anticipated incremental growth through the year 2020. The space not needed for Court activity will be finished for use by Executive Branch agencies. The project will be built on Block 24, which is referred to as the Hamilton Hotel site.

Copies of the Environmental Assessment and Finding of No Significant Impact are available from: Woodward-Clyde Consultants, 111 S.W. Columbia Avenue, suite 990, Portland, Oregon 97201.

December 17, 1992.

Robert D. Eberle,
Regional Administrator (10A).

[FR Doc. 92-31686 Filed 12-29-92; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

Idaho National Engineering Laboratory Environmental Dose Reconstruction Project: Public Meetings

The National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC), announces the following meetings.

Name: Idaho National Engineering Laboratory Environmental Dose Reconstruction Project

Date: January 21, 1993

Time: 7 p.m.-9 p.m.

Place: Best Western Cotton Tree Inn, 1415 Bench Road, Pocatello, Idaho 83201

Date: January 25, 1993

Time: 7 p.m.-9 p.m.

Place: Shilo Inn, 702 Appleway, Coeur d'Alene, Idaho 83814

Status: Open to the public for observation and comment, limited only by space available. The meeting rooms accommodate approximately 100 people.

Purpose: Under a Memorandum of Understanding with the Department of Energy (DOE), the Department of Health and Human Services has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production and use.

An initial step in an analytic epidemiologic study for persons living offsite of a given DOE facility is the reconstruction of radiation doses due to releases from that facility. CDC is beginning such an environmental dose reconstruction for DOE's Idaho National Engineering Laboratory near Idaho Falls, Idaho. The purpose of these public meetings is to obtain public comment on contractor-prepared draft plans for: (1) Public involvement and; (2) obtaining the data pertinent to a dose reconstruction at the Idaho National Engineering Laboratory.

Agenda items are subject to change as priorities dictate.

Contact person for more information: Leeann Sewell, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, 4770 Buford Highway, NE., (F-35), Atlanta, Georgia, 30341-3724, telephone 404/488-7040.

Dated: December 22, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination,
Centers for Disease Control and Prevention
(CDC).

[FR Doc. 92-31544 Filed 12-29-92; 8:45 am]

BILLING CODE 4160-18-M

The National Center for Infectious Diseases (NCID) of the Centers for Disease Control and Prevention (CDC); Meeting

Name: Raccoon Rabies Epizootic and Control Meeting.

Times and Dates: 8:30 a.m.-5:30 p.m., January 21, 1993. 8:30 a.m.-2:45 p.m., January 22, 1993.

Place: CDC, Auditorium A, 1600 Clifton Road, NE., Atlanta, Georgia 30333.

Status: Open to the public for observation and comment, limited only by space available.

Purpose: To provide state and federal public health officials with current information regarding the ongoing epizootic of rabies in raccoons and to assess the need for additional measures to reduce human and animal risks of exposure to wildlife rabies.

Matters to be Discussed: Meeting attendees will discuss the raccoon rabies epizootic and possible control measures. All suggestions will be considered when the final recommendations are made.

Contact Person for More Information: James E. Childs, Sc.D., Epidemiologist, NCID, CDC, Mailstop G-13, 1600 Clifton Road, NE., Atlanta, Georgia 30333, telephone 404/639-1075.

Dated: December 23, 1992.

Elvin Hilyer,

Associate Director for Policy Coordination,
Centers for Disease Control and Prevention
(CDC).

[FR Doc. 92-31688 Filed 12-29-92; 8:45 am]

BILLING CODE 4160-18-M

Agency for Health Care Policy and Research

In accordance with section 10(a) of the Federal Advisory Committee Act (5 U.S.C. appendix 2), announcement is made of the following advisory subcommittee scheduled to meet during the month of December 1992:

Name: ADP Support for the Center for General Health Services Intramural Research.

Dates and Times: December 29, 1992, 8:30 a.m.

Place: Executive Office Center, 2101 East Jefferson Street, 6th Floor

Conference Room, Rockville, Maryland 20852.

This meeting will be closed to the public.

Purpose: The Subcommittee's charge is to provide, on behalf of the Health Care Policy Research Contracts Review Committee, advise and recommendations to the Secretary and to the Administrator, Agency for Health Care Policy and Research (AHCPR) regarding the scientific and technical merit of contract proposals submitted in response to a specific Request for Proposals. The purpose of this contract is to provide timely and efficient data base management, computer programming (including econometric analyses), micro-simulation modeling, and complex survey statistics, computer-related consulting and technical assistance, and editorial and graphics services in support of data preparation, dissemination, and analysis activities in the Division of Provider Studies, and Division of Long-Term Care, and the Division of Statistics and Research Methodology, Center for General Health Services Intramural Research, AHCPR.

Agenda: The session of this Subcommittee will be devoted entirely to the technical review and evaluation of contract proposals submitted in response to a specific Request for Proposals. The Administrator, AHCPR, has made a formal determination that this meeting will not be open to the public. This is necessary to protect the free exchange of views and avoid undue interference with Committee and Department operations, and safeguard confidential proprietary information and personal information concerning individuals associated with the proposals that may be revealed during the sessions. This is in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. appendix 2, Department regulations, 45 CFR 11.5(a)(6), and procurement regulations, 48 CFR 315.604(d).

Anyone wishing to obtain information regarding this meeting should contact Karen Harris, Office of Management, Management Systems and Services Branch, Agency for Health Care Policy and Research, Executive Office Center, 2101 E. Jefferson Street, suite 601, Rockville, Maryland 20852, (301) 227-8441.

Dated: December 22, 1992.

J. Jarrett Clinton,

Administrator.

[FR Doc. 92-31697 Filed 12-29-92; 8:45 am]

BILLING CODE 4160-90-M

Health Resources and Services Administration

Notice Regarding Federally Supported Health Centers Assistance Act of 1992

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Secretary of Health and Human Services (the "Secretary"), in consultation with the Attorney General, provides the following notice regarding Public Law 102-501, the "Federally Supported Health Centers Assistance Act of 1992" (the "Act"). The Act provides for liability protection for certain health care professionals and entities. This notice sets forth information whereby an entity or a person can determine when, and the extent to which, it is deemed to be an entity as described in the Act.

DATES: This notice is effective December 30, 1992.

FOR FURTHER INFORMATION CONTACT:

For further information, please contact Richard C. Bohrer, Director, Division of Community and Migrant Health, Bureau of Primary Health Care, suite 7A-55, 5600 Fishers Lane, Rockville, Maryland 20857, Phone: (301) 443-2260.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 224(a) of the Public Health Service (PHS) Act, (section 233(a) of title 42 of the United States Code), provides that the remedy against the United States provided under the Federal Tort Claims Act (FTCA) resulting from the performance of medical, surgical, dental or related functions by any commissioned officers or employee of the PHS while acting within the scope of his office or employment, shall be exclusive of any other civil action or proceeding. The Act provides that, subject to the provisions of the Act, certain entities and officers, employees and contractors of entities shall be deemed to be an employee of the PHS within the exclusive remedy provision of section 224(a). This notice is intended to provide information as to action that the Department of Health and Human Services (HHS) will take to implement the Act. Application instructions pertaining to the deeming process discussed below and further information regarding the specific effective date of FTCA coverage will be provided directly to the entities listed below.

II. Entities

An entity will be deemed to be an employee of the PHS pursuant to the

Act only if HHS has determined, and has advised the entity, that the entity—

(A) Receives Federal funds under any of the following grant programs:

(1) Section 329 of the PHS Act, 42 U.S.C. 254b (relating to grants for migrant health centers);

(2) Section 330 of the PHS Act, 42 U.S.C. 254c (relating to grants for community health centers);

(3) Section 340A of the PHS Act, 42 U.S.C. 256a (relating to grants for health services for residents of public housing); and

(4) Section 340 of the PHS Act, 42 U.S.C. 256 (relating to grants for health services for the homeless); and

(B) Meets the following requirements:

- (1) Has implemented appropriate policies and procedures to reduce the risk of malpractice and the risk of lawsuits arising out of any health or health-related functions performed by the entity;

- (2) Has reviewed and verified the professional credentials, references, claims history, fitness, professional review organization findings, and license status of its physicians and other licensed or certified health care practitioners, and, where necessary, has obtained the permission from these individuals to gain access to this information;

- (3) Has no history of claims having been filed against the United States as a result of the application of section 224 to the entity or its officers, employees, or contractors as provided for under this section, or, if such a history exists, has fully cooperated with the Attorney General in defending against any such claims and either has taken, or will take, any necessary corrective steps to assure against such claims in the future; and

- (4) Has fully cooperated with the Attorney General in providing information relating to an estimate described under section 224(k) of the Act.

An entity will be deemed to be an entity described in section 224 (g)(4) and (h) as of the date upon which it receives notice from HHS that it has been deemed to be an entity as described for purposes of the Act. Each notice shall be effective only as to acts and omissions occurring on and after the date specified in the notice. Pursuant to section 224(g)(3), no notice shall be effective before January 1, 1993, and no notice shall be effective as to any act or omission occurring after December 31, 1995.

In some cases, grantees contract with other entities (as opposed to individual contractors—see section III below) for the provision of health services. The typical situation is a subgrant or

contract for the provision of the full range of health services. The Secretary will identify those contracting entities that will be subject to coverage under section 224(g) in notices issued pursuant to the preceding paragraph.

III. Covered Individuals.

In addition to the entity itself, section 224(g) provides that certain individuals may be covered under the FTCA.

Officers and employees are subject to coverage, as well as certain contractors.

The Act provides that an individual may be considered to be a contractor of an entity described in the Act only if—

(A) The individual normally performs on average at least 32½ hours of service per week for the entity for the period of the contract; or

(B) In the case of an individual who normally performs on average less than 32½ hours of services per week for the entity for the period of the contract and is a licensed or certified provider of obstetrical services—

(1) The individual's medical malpractice liability insurance coverage does not extend to services performed by the individual for the entity under the contract; or

(2) The Secretary finds that patients to whom the entity furnishes services will be deprived of obstetrical services if such individual is not considered a contractor of the entity for purposes of paragraph (1).

Coverage of individuals, whether employees or contractors, does not extend to acts or omissions that are not related to the grant supported activity. The covered entity itself (assuming it meets the statutory requirements for FTCA coverage) will be covered for claims against it, even if an individual health care practitioner is not covered in a particular case. Thus, for example, if a contractor works fewer than 32½ hours and is not a provider of obstetrical services, the contractor would not be covered for services related to the grant, but the grantee itself would be covered.

IV. Grant Implications

Grantees have been paying for malpractice insurance premiums as allowable costs under their grants. Once a grantee has been deemed to be an entity described in section 224 (g)(4) and (h) and its effective date has arrived, it would no longer be reasonable to incur such costs. However, the Secretary recognizes that some insurable risks will remain after the effective date of eligibility for FTCA coverage, including risks covered by "tail insurance," and that these risks may require the purchase of private insurance.

V. Hospital Admitting Privileges

Section 3 of the Act further amends section 224 by providing that officers, employees, and contractors of covered entities may not be denied hospital admitting privileges if they meet the appropriate professional qualifications and agree to abide by the policies and bylaws of the hospital. These individuals are thus to be given the same treatment as members of the National Health Service Corps with respect to hospital admitting privileges. Hospitals that fail to comply will be in jeopardy of losing Medicare and Medicaid reimbursements.

Hospitals are put on notice that the extension of FTCA coverage to the grantees will mean that covered individuals may no longer need to have malpractice insurance for each act or omission covered by the FTCA. The lack of such insurance may not be used as a basis for the denial of admitting privileges. Covered entities may demonstrate the fact of FTCA coverage by showing inquiring hospitals the notice described in Section II above.

* * * * *

This notice is not intended to constitute, and does not constitute, a comprehensive notice pertaining to any provision of the Act except to the extent that procedures pertaining to implementation of the Act are described explicitly above. All persons are put on notice that the Act will not provide an exclusive remedy for any act or omission until and unless a transfer of funds is made pursuant to section 224 (g)(1) and (k) of the PHS Act. In addition, immunity of an individual or entity from suit will attach only to the extent that the provisions of 42 U.S.C. 233(a) are applicable to a specific claim or case. The applicability of the Act and 42 U.S.C. 233(a) to a particular claim or case will depend upon the determination or certification (as appropriate) by the Attorney General that the individual or entity is covered by the Act and was acting within the scope of employment. A determination or certification is subject to judicial review.

Dated: December 22, 1992.

Robert G. Harmon,
Administrator.

[FR Doc. 92-31615 Filed 12-29-92; 8:45 am]

BILLING CODE 4180-15-M

National Institutes of Health**National Cancer Institute; Amended Notice of Meeting**

Notice is hereby given to amend the notice of the Development Therapeutics Contract Review Committee meeting which was published in the *Federal Register* (57 FR 54994) on November 23, 1992.

The meeting originally scheduled to be held on January 15, 1993 at Bethesda Holiday Inn, Montgomery Conference Room, Bethesda, Maryland, will now be held on January 14-15, 1993 at the same location. More responses to a Master Agreement have been received than anticipated, making it necessary to expand the duration of the meeting to two days.

The meeting will be open to the public on 14 January from 9 a.m. to approximately 9:30 a.m. to discuss administrative details. Attendance by the public will be limited to space available. The meeting will be closed to the public from approximately 9:30 a.m. to recess. On Friday, January 15, the meeting will reopen to the public at 9 a.m. until approximately 9:30 a.m. The meeting will remain closed from 9:30 a.m. until adjournment.

Dated: December 23, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-31732 Filed 12-29-92; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Meeting, National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases on January 25, 1993. The meeting will be held at the Washington Capital Marriott, 1221 22nd Street, NW., Washington, DC 20015. The Board will meet January 25, 8:30 a.m. to approximately 4 p.m.

The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the National effort to combat arthritis and musculoskeletal and skin diseases. Attendance by the public will be limited to space available.

Ms. Geraldine B. Pollen, Executive Director, National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496-6045, will provide on request an agenda

and roster of the members. Summaries of the meeting may also be obtained by contacting her office.

Dated: December 23, 1992.

Susan K. Feldman,

NIH Committee Management Officer.

[FR Doc. 92-31731 Filed 12-29-92; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR**Bureau of Land Management**

[AZ-040-5410-10-A100]

Receipt of Application for the Conveyance of Federally-Owned Mineral Interests; Safford District, Arizona

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of receipt of conveyance of mineral interest application in Greenlee County, Arizona.

SUMMARY: Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Roger Phillips, Trustee of The Phillips Real Estate Investments, Inc., Defined Benefit Pension Plan.

Gila and Salt River Meridian, Arizona

T. 4 S., R. 31 E.,

Sec. 26, E $\frac{1}{2}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, W $\frac{1}{2}$ SW $\frac{1}{4}$,

SE $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 27, SE $\frac{1}{4}$ NW $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$; SE $\frac{1}{4}$;

Sec. 29, NE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$,

S $\frac{1}{2}$;

Sec. 31, lots 1-4 inclusive, E $\frac{1}{2}$, E $\frac{1}{2}$ W $\frac{1}{2}$;

Sec. 33, NE $\frac{1}{4}$, SW $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ SE $\frac{1}{4}$;

Sec. 34, W $\frac{1}{2}$ E $\frac{1}{2}$, SE $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$,

SE $\frac{1}{4}$ SE $\frac{1}{4}$;

Sec. 35, E $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$,

SW $\frac{1}{2}$ SW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$.

T. 5 S., R. 31 E.,

Sec. 5, lot 4;

Sec. 6, lots 2 and 3, SW $\frac{1}{4}$ NE $\frac{1}{4}$,

NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$.

Containing 3,246.90 acres.

Upon publication of this notice in the *Federal Register*, the mineral interests within the legal description given above will be segregated to the extent that they will not be open to appropriation under the public land laws including the mining laws and the mineral leasing laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interest, upon final rejection of the application or two years from the date of filing of the application, November 10, 1992, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Additional information concerning this application may be obtained from the

Realty Specialist at the Safford District Office, 711 14th Avenue, Safford, Arizona 85546.

Dated: December 21, 1992.

Frank L. Rowley,

Acting District Manager.

[FR Doc. 92-31684 Filed 12-29-92; 8:45 am]

BILLING CODE 4310-32-M

Bureau of Land Management

[AA-610-4110-02-24 1A]

Decision of the Secretary of the Interior Extending Reduction in Rental Rate for Oil and Gas Leases

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Decision of the Secretary of the Interior Extending Rental Rate Reduction For All Onshore Oil and Gas Leases Except Those Issued Under the Provisions of the Federal Onshore Oil and Gas Leasing Reform Act of 1987, the Combined Hydrocarbon Leasing Act of 1981, and Those Reinstated Under the Provisions of the Federal Oil and Gas Management Act of 1982.

SUMMARY: The Secretary of the Interior is extending the rental rate reduction announced in the *Federal Register* on February 6, 1992 (Vol 57, No. 25), for onshore oil and gas leases in force issued prior to January 1, 1988. Exempted from the rental rate reduction are those leases issued under the provisions of the Federal Onshore Oil and Gas Leasing Reform Act of 1987, the Combined Hydrocarbon Leasing Act of 1981, and those reinstated under the provisions of the Federal Oil and Gas Royalty Management Act of 1982.

EFFECTIVE DATE: March 1, 1993.

ADDRESSES: Inquiries or suggestions should be sent to: Director (610), Bureau of Land Management, room 510, LS Building, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT:

Erick Kaarlela, (202) 653-2182.

SUPPLEMENTARY INFORMATION: Effective March 1, 1992, the Secretary of the Interior reduced, to not greater than \$1 per acre or fraction thereof per year, the rate of rental for certain onshore oil and gas leases then in force. The reduction in the rental rate extends through February 28, 1993. Exempted from that reduction were those leases issued under the provisions of the Federal Onshore Oil and Gas Leasing Reform Act of 1987, the Combined Hydrocarbon Act of 1981, and those leases reinstated under the provisions of the Federal Oil

and Gas Royalty Management Act of 1982.

The Secretary of the Interior has announced a decision to continue this rental reduction through February 29, 1996. This action becomes effective March 1, 1993, and will continue through February 29, 1996, unless, after considering factors related to the rental rate, such as the level of development of Federal leases, economic conditions in the oil industry, or the level of imports, the Secretary of the Interior decides to terminate the rental reduction at an earlier date. Any decision to terminate the rental reduction policy will be made only after lessees are given 3 months notice of the intended action. The reduction applies to all rental for all leases in effect on March 1, 1993, except those leases issued under the provisions of the Federal Onshore Oil and Gas Leasing Reform Act of 1987, the Combined Hydrocarbon Act of 1981, and those reinstated under the provisions of the Federal Oil and Gas Royalty Management Act of 1982, regardless of the rate then applicable unless that rate already is less than \$1 per acre per year.

This rental reduction is granted by the Secretary of the Interior under section 39 of the Mineral Leasing Act of 1920 (30 U.S.C. 209) which states in part: "The Secretary of the Interior, for the purpose of encouraging the greatest ultimate recovery of coal, oil, gas, * * * and in the interest of conservation of natural resources, is authorized to waive, suspend, or reduce the rental * * * whenever in his judgment it is necessary to do so in order to promote development * * *."

The Department of the Interior granted, in 1986 and 1987, a rental reduction for all simultaneous leases whose annual rental rates would otherwise have increased by regulation from \$1 to \$3 per acre. The rental rates remained at \$1 per acre. This policy was in response to an increase in oil and gas lease terminations and relinquishments. The Federal Government wished to encourage domestic exploration and development and allow more economical Federal oil and gas development. In order to enable developers to project more constant Federal oil and gas lease acquisition costs over a longer period of time and provide more stability to the industry, the annual rental rates for certain onshore Federal oil and gas leases was reduced in 1989 to \$1 per acre beyond the initial lease year.

The economic conditions that prompted the Secretary of the Interior to reduce the rental rates at that time are

still prevalent today. Various 1992 U.S. oil and gas exploration, development and production statistics are at 30-year lows. Domestic exploration and recent operating drilling rig counts have declined to under 1,000 from over 10,000 during the boom times in the late 1970's and early 1980's. The Secretary finds that raising the rental rates from their present level of \$1 per acre will reduce the amount of acreage under lease and thereby diminish the likelihood that development of leases will occur. By extending the rental reduction for at least 3 more years, the Secretary of the Interior will be ensuring that the Federal leasing program itself is not a deterrent to exploration, but instead provides an incentive for development of oil and gas resources.

Dated: December 23, 1992.

Richard Roldan,

Deputy Secretary of the Interior.

[FR Doc. 92-31541 Filed 12-29-92; 8:45 am]

BILLING CODE 4310-04-M

Bureau of Land Management

[WY-030-4210-05; WYW 127563]

Realty Actions; Sales, Leases, etc.; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action; Proposed Direct Sale of Public Land Parcel in Fremont County, Wyoming.

SUMMARY: The Bureau of Land Management has received a proposal to sell the following described public lands to the Fremont County Solid Waste Disposal District pursuant to sections 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, 1719:

Sixth Principal Meridian

T. 34 N., R. 96 W.,

Sec. 26, W $\frac{1}{2}$ W $\frac{1}{2}$ NE $\frac{1}{4}$, NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, NW $\frac{1}{4}$ SE $\frac{1}{4}$.

The above lands aggregate 280 acres.

This same proposal was originally described in a Notice of Realty Action (NORA) published in the Federal Register on April 17, 1992. This notice is being issued to allow more time for the BLM to process the proposed sale.

As explained in the original notice (WYW 125199) published in 57 FR 53774 and 53775 on April 17, 1992, the Fremont County Solid Waste Disposal District is proposing to purchase 80 acres of public land which they presently lease for a sanitary landfill under Recreation and Public Purposes Lease WYW 79452, and an additional

200 acres for future expansion of the sanitary landfill. The existing 80 acre lease, WYW 79452, would be cancelled simultaneously with the issuance of the patent for the proposed sale of the 280 acres. This sanitary landfill is known as the Sand Draw landfill which serves the Riverton Area as well as the nearby rural and industrial areas. The Sand Draw landfill has the potential, due to its location and physical characteristics, to become the primary centralized sanitary landfill for this portion of Fremont County. The Fremont County Solid Waste Disposal District must have an independent third party complete a landfill transfer audit which is an assessment of the conditions of the landfill prior to title transfer. The independent third party must then sign a statement that no significant risk to human health and the environment exists before the proposed sale would proceed.

The proposed direct sale to the Fremont County Solid Waste Disposal District would be made at fair market value. Additionally, Fremont County Solid Waste Disposal District would be required to submit a nonrefundable application fee of \$50.00 in accordance with 43 CFR subpart 2720 for conveyance of all unreserved mineral interests in the lands.

The proposed sale is consistent with the Lander Resource Management Plan. The planning document and environmental assessment covering the proposed sale will be available for review at the Bureau of Land Management, Lander Resource Area, Lander, Wyoming.

Conveyance of the land would be subject to the following:

1. Reservation of a right-of-way for ditches or canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.

2. Reservation of oil and gas to the United States with the right to prospect, explore, and develop the same in accordance with the provisions of the Federal mineral laws in force at the time of disposal.

3. BLM oil and gas leases, serial numbers WYC 068828 and WYC 068994.

4. BLM right-of-way serial number WYW 86050 for a power transmission line held by Riverton Valley Electric Association, Inc.

5. Any other valid existing rights including rights-of-way that are identified during the evaluation process.

The public lands involved are within the East Beaver Common Allotment No. 1801. The grazing permittees are Ed Virden, John Osborne, Edna Bringolf, Robert W. Hamilton, and John Hancock Mutual Life Insurance Company, Inc.

These permittees have either signed a waiver of their 2-year notice of cancellation of grazing privileges or have been served a 2-year notice prior to cancellation of a portion of their grazing permits, and that notification was sent with a copy of the original Notice of Realty Action. The grazing privileges would not be cancelled if the lands are not sold.

The public lands described above shall be segregated from all forms of appropriation under the public land laws, including the mining laws upon publication of this notice in the *Federal Register*. The segregative effect will end 270 days from the date of the publication, upon issuance of a patent, or upon publication in the *Federal Register* of a termination of the segregation, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Jack Kelly, Area Manager, Lander Resource Area, 125 Sunflower, P.O. Box 589, Lander, Wyoming 82520, (307) 332-7822.

SUPPLEMENTARY INFORMATION: For a period of forty five (45) days from the date of publication of this notice in the *Federal Register*, interested parties may submit comments to the Area Manager, Bureau of Land Management, Lander Resource Area, P.O. Box 589, Lander, Wyoming 82520. Any comments will be evaluated by the BLM Wyoming State Director who may sustain, vacate, or modify this proposed realty action.

Dated: December 23, 1992.

Jack Kelly,
Area Manager.

[FR Doc. 92-31765 Filed 12-29-92; 8:45 am]
BILLING CODE 4310-22-M

National Park Service

Meeting of the National Park System Advisory Board

AGENCY: National Park Service, Interior.
ACTION: Notice of meeting of National Park System Advisory Board.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix, that a meeting of the National Park System Advisory Board will be held on February 3 and 4, 1993 at the Sheraton Key Largo Resort, 97000 South Overseas Highway, Key Largo, Florida. The general business meeting will start at 8 a.m., Wednesday, February 3, continuing until about 5 p.m. The Board will reconvene at 8 a.m. the next morning and conclude its meeting by noon on Thursday, February 4. The meeting will follow orientation tours and briefings in nearby Everglades

National Park, Big Cypress National Preserve and Biscayne National Park.

National Historic Landmark nominations are scheduled for review during the morning of February 3, along with two studies of resource areas being considered for potential addition to the National Park System. The studies are of northern New Mexico sites associated with noted early 20th Century artist Georgia O'Keeffe, and of the Hudson River Valley landscapes associated with noted 19th Century painter Thomas Cole and the Hudson River School of Art. Other studies may also be presented, and there will be some discussion of the upcoming National Park Service theme study of American Labor History.

Scheduled for discussion the afternoon of February 3 and the morning of February 4 are the recent National Research Council report entitled "Science and the National Parks", the status of the National Natural Landmarks Program, the status of National Park Service planning for the Presidio of San Francisco, the Board's review of urban park issues, the status of NPS special resource/new park area studies, and the education potential of the parks. The Board will also consider a proposed report and recommendations on the Service's Rivers, Trails and Conservation Assistance Program as a means of implementing the Secretary's Outdoor Recreation Initiative.

The Board will be addressed by officials of the Department of the Interior and the National Park Service at various times, and other miscellaneous topics and reports may be covered.

The order of the agenda may be changed, if necessary, to accommodate travel schedules or for other reasons.

The business meeting will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first-served basis. Anyone may file with the Board a written statement concerning matters to be discussed. The Chairman may also permit attendees to address the Board, but may restrict the length of presentations as necessary to allow the Board to complete its agenda within the allotted time.

Persons wishing further information concerning the meeting, or who wish to submit statements, may contact Mr. David L. Jervis, Office of Policy, National Park Service, P.O. Box 37127, Washington, DC 20013-7127 (telephone 202-208-4030). More specific information on potential National Historic Landmarks may be obtained from Senior Historian Benjamin Levy

(History Division, telephone 202-343-8164) at the same P.O. Box address.

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting, in room 1220, Main Interior Building, 1849 C Street, NW., Washington, DC.

Herbert S. Cables, Jr.,

Deputy Director.

[FR Doc. 92-31543 Filed 12-29-92; 8:45 am]

BILLING CODE 4310-70-M

Sudbury, Assabet and Concord Rivers Wild and Scenic Study, MA; Sudbury, Assabet and Concord Rivers Study Committee Meeting; Correction

This announcement supplements original notice, dated December 18, 1992 (57 FR 60245), to include the time and reiterate the meeting location of the Thursday, January 28, 1993 meeting of the Sudbury, Assabet, and Concord River Study Committee.

The meeting will be held at 7:30 pm in the Wayland Town Hall, Wayland, Massachusetts. (Directions: Wayland Town Hall is located on the west side of Route 27, just south of the intersection of Routes 20 and 27 in Wayland center. From the north, take Route 27 south and turn right at first driveway after crossing Route 27. From the west, take Route 20 east, turn left on Route 27 south and take immediate right into driveway. Parking lot is behind building.)

Dated: December 23, 1992.

John J. Burchill,

Acting Regional Director.

[FR Doc. 92-31739 Filed 12-29-92; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-338]

Commission Determination Not To Review Initial Determination Granting Joint Motion To Terminate the Investigation With Respect To Respondent

In the Matter of Certain Bulk Bags and Process for Making Same

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's initial determination (ID) in the above-captioned investigation granting a joint motion to terminate the

investigation with respect to respondent Trimeg Holdings, Ltd. ("Trimeg") on the basis of a settlement agreement.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-2000.

FOR FURTHER INFORMATION CONTACT: Lyle B. Vander Schaaf, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-3107. Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202-205-1810.

SUPPLEMENTARY INFORMATION: On May 21, 1992, Better Agricultural Goals Corporation and Super Sack Manufacturing Corporation (collectively "complainants") filed a complaint with the Commission alleging unfair acts in violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). The unfair acts alleged in the complaint are the importation and sale of certain bulk bags that infringe claim 8 of U.S. Letters Patent 4,143,796 and claim 20 of U.S. Letters Patent 4,194,652. On June 5, 1992, complainants filed an amended complaint. On June 18, 1992, the Commission determined to institute an investigation of the complaint and publish notice of its investigation in the *Federal Register* (57 FR 28185 (June 24, 1992)).

On November 12, 1992, complainants and respondent Trimeg jointly moved for termination of this investigation as to Trimeg on the basis of a settlement agreement (Motion Docket No. 338-13). The Commission investigative attorney filed papers supporting the joint motion. On November 20, 1992, the presiding administrative law judge issued an ID (Order No. 11) granting the motion. No petitions for review, or agency or public comments were received.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rule 210.53 (19 CFR 210.53, as amended).

Issued: December 23, 1992.

By order of the Commission.

Paul R. Bardos,

Acting Secretary.

[FR Doc. 92-31726 Filed 12-29-92; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Intent To Engage In Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office:

Allied Products Corporation (a Delaware corporation), 10 South Riverside Plaza, suite 1600, Chicago, Illinois 60606.

2. Wholly owned subsidiaries which will participate in the operations, and States of incorporation:

Coz Corporation (Delaware)
Bush Hog Corporation (Delaware)
Verson Corporation (Delaware)
Sidney L. Strickland, Jr.,
Secretary.

[FR Doc. 92-31640 Filed 12-29-92; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

- (1) The title of the form/collection;
- (2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
- (3) How often the form must be filled out or the information is collected;
- (4) Who will be asked or required to respond, as well as a brief abstract;
- (5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
- (6) An estimate of the total public burden (in hours) associated with the collection; and,
- (7) An indication as to whether section 3504(h) of Public Law 96-511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202)

395-7340 and to the Department of Justice's Clearance Officer, Mr. Don Wolfrey, on (202) 514-4115. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Don Wolfrey, DOJ Clearance Officer, SPS/JMD/850 WCTR, Department of Justice, Washington, DC 20530.

Revision of a Currently Approved Collection

- (1) Immigrant Petition By Alien Entrepreneur
- (2) Form I-526. Immigration and Naturalization Service
- (3) On occasion
- (4) Individuals or households. The information is used by an entrepreneur to petition as an immigrant to the U.S.
- (5) 2,000 annual responses at 1.25 hours per response
- (6) 2,500 annual burden hours
- (7) Not applicable under 3504(h)

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection

- (1) Denial of Federal Benefits for Drug Offenders
- (2) OJP Form 3500/2. Office of Justice Programs
- (3) On occasion
- (4) State or local governments. The information is used to ensure that convicted offenders do not receive any Federal benefits that have been denied by court action.
- (5) 500 annual responses at .083 hours per response
- (6) 41 annual burden hours
- (7) Not applicable under 3504(h)

Reinstatement of a Previously Approved Collection for Which Approval Has Expired

- (1) Affidavit of Support
- (2) I-134. Immigration and Naturalization Service
- (3) On occasion
- (4) Individuals or households. The information is used to determine if an applicant for benefits will become a public charge if admitted into the United States.
- (5) 44,000 annual responses at .332 hours per response
- (6) 14,608 annual burden hours
- (7) Not applicable under 3504(h)

Existing Collection in Use Without an OMB Control Number

- (1) Urine Drug Testing Custody & Control Form
- (2) Federal Bureau of Investigation
- (3) Daily
- (4) Federal agencies or employees.

This chain of custody form is used to document drug testing records and has been devised to address the needs of the Federal Bureau of Investigation, the Drug Enforcement Administration, the United States Marshals Service and the United States Secret Service.

- (5) 188,976 annual responses at .166 hours per response

- (6) 315 annual burden hours
 - (7) Not applicable under 3504(h)
- Public comment on these items is encouraged.

Dated: December 23, 1992.

Don Wolfrey,

Department Clearance Officer, Department of Justice.

[FR Doc. 92-31638 Filed 12-29-92; 8:45 am]

BILLING CODE 4410-10-M

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

- (1) The title of the form/collection;
- (2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and

(7) An indication as to whether Section 3504(h) of Public Law 96-511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Ms. Lin Liu on (202) 395-7340 and to the Department of Justice's Clearance Officer, Mr. Don Wolfrey, on (202) 514-4115. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Don Wolfrey, DOJ Clearance Officer, SPS/JMD/850 WCTR, Department of Justice, Washington, DC 20530.

This notice contains a collection for which an expedited review has been requested from the Office of Management and Budget (INS Form I-129). In an effort to fully inform the reporting public, this entry is printed in full, including instructions, at the end of this notice. Written comments

concerning this form should be sent to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, 425 I Street NW., room 2001D, Washington, DC 20536, Attention: Form I-129, within 30 days after the date of publication (January 29, 1993) of this notice in the **Federal Register**.

Revision of a Currently Approved Collection

An expedited review has been requested for this entry.

- (1) Petition for a Nonimmigrant Worker.

- (2) Form I-129. Immigration and Naturalization Service.

- (3) On occasion.

(4) Individuals or households. The I-129 is used to petition for temporary workers, including the new classification created by the Immigration Act of 1990. The form replaces forms I-129H, I-129L, and I-126.

- (5) 223,000 annual responses at 1.41 hours per response.

- (6) 314,430 annual burden hours.

- (7) Not applicable under 3504(h).

Public comment on these items is encouraged.

Dated: December 23, 1992.

Don Wolfrey,

Department Clearance Officer, Department of Justice.

BILLING CODE 4410-10-M

U.S. Department of Justice
Immigration and Naturalization Service

DRAFT

***Instructions for Petition for
a Nonimmigrant Worker
Form I-129***

Purpose Of The Form.

The Immigration and Nationality Act allows employers to bring certain types of foreign workers into the United States temporarily as nonimmigrants to perform services or labor or to receive training. Form I-129 is used to petition for these workers. If a petition is approved, the Service will notify the U.S. Consulate or the INS inspection facility for visa or admission purposes. However, if the workers are already in the U.S. in another status, and that status is still valid, you can use this form to simultaneously apply to change their status here in the U.S. so they may engage in the employment. If the workers are already in the U.S. in the status you are filing for, you can use this form to apply to extend their stay or to receive approval of a change in their employment.

Who May File.

A U.S. employer may file a petition for any type of nonimmigrant worker. A foreign employer may file for certain types of workers, as indicated in the specific classification descriptions. Separate instructions on circumstances where agents may file petitions are discussed in Part 3 of this pamphlet.

Overview of These Instructions.

Form I-129 consists of a basic petition and different supplements that apply to the various classifications. When you file a petition, you must file it with the supplement for that classification and with the required initial evidence listed in these instructions.

This pamphlet is designed to help you file an I-129 petition and to understand what evidence you must file with the petition. The Immigration and Nationality Act is very complex, particularly with regard to the variety of nonimmigrant worker categories and the specific requirements for the various classifications. Please read this pamphlet carefully before filing your petition. This pamphlet summarizes requirements contained in regulations at 8 CFR 214.2. Please refer to the regulations for further guidance and detail.

This pamphlet is divided into four parts. **Part 1** discusses the specific nonimmigrant worker classifications which always require a petition. **Part 2** discusses the classifications which do not require a petition for new employment if the alien is outside the U.S. but do require a petition for a change of status or extension of stay.

Part 3 gives specific instructions about how to fill out the form. It also discusses the *consultation* that must be filed with many types of petitions and discusses how to actually file the petition, such as where to file it and the filing fee.

Part 4 describes how your petition will be processed. The instructions in this part also explain the penalties for falsifying or concealing facts or submitting a false document.

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DRAFT

1. CLASSIFICATIONS WHICH ALWAYS REQUIRE A PETITION.

The following classifications always require a petition. A petition for any of these classifications must be filed with the listed initial evidence. However, a petition for a change of status or extension of stay has somewhat different evidence requirements in certain situations. Please see the separate evidence instructions in Part 3 of this pamphlet.

H-1A.

An H-1A is an alien coming to perform services as a registered professional nurse. The petition must be filed by a U.S. employer that provides health care services (including nursing contractors). You must file your petition with:

- copies of evidence the alien has a full and unrestricted license to practice professional nursing in the country where he or she obtained nursing education, or that the nursing education was received in the U.S. or Canada;
- copies of evidence the alien has either:
 - passed the test given by the Commission on Graduate of Foreign Nursing Schools (CGFNS);
 - a permanent license to practice professional nursing in the state of intended employment; or
 - a permanent license to practice professional nursing in any state or territory of the U.S. and has temporary authorization to practice professional nursing in the state of intended employment; and
- copies of evidence the alien is fully qualified and eligible under the laws of the state or territory of intended employment to work as a professional nurse immediately after entry;
- an *original* statement indicating you intend to employ the alien solely as a registered professional nurse; and
- a copy of the Department of Labor's current notice of acceptance of the filing of your attestation on Form ETA 9029.

H-1B.

An H-1B is an alien coming temporarily to perform services in a specialty occupation. A specialty occupation is one which requires the theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation and which requires completion of a specific course of education

culminating in a baccalaureate degree in a specific occupational specialty. Write **H-1B1** in the classification requested block. The petition must be filed by the U.S. employer and must be filed with:

- an *original certified* labor condition application from the Department of Labor on DOL Form ETA-9035;
- copies of evidence the proposed employment qualifies as within a specialty occupation;
- evidence the alien has the required degree by submitting either:
 - a copy of the person's U.S. baccalaureate or higher degree which is required by the specialty occupation;
 - a copy of a foreign degree and evidence it is equivalent to the U.S. degree; or
 - copies of evidence of education and experience which is equivalent to the required U.S. degree;
- a copy of any required license or other official permission to practice the occupation in the state of intended employment; and
- a copy of any written contract between you and the alien or a summary of the terms of the oral agreement under which the alien will be employed.

By filing a petition for an H-1B1, the petitioner certifies that it will comply with the terms of the labor condition application for the duration of the alien's authorized stay for H-1B employment.

H-1B.

An H-1B is also an alien coming to perform services of an exceptional nature relating to a cooperative research and development project administered by the Department of Defense. The petition must be filed by the U.S. employer. Write **H-1B2** in the classification requested block. You must file your petition with:

- a description of the proposed employment and evidence the services and project meet the above conditions; and
- a statement listing the names of all aliens who are not permanent residents who have been employed on the project within the past year, along with their dates of employment.

By filing a petition for an H-1B2, the petitioner certifies that the workers will be working on a cooperative research and development project or a coproduction project under a reciprocal government-to-government agreement administered by the Department of Defense.

H-1B.

An H-1B is also an individual fashion model who is nationally or internationally acclaimed and recognized for achievements, to be employed in a capacity requiring someone of distinguished merit and ability. Write H-1B3 in the classification requested block. The petition must be filed by the U.S. employer with:

- copies of evidence establishing that the alien is nationally or internationally recognized in the field of fashion modeling. The evidence must include at least 2 different types of documentation showing that the person:
 - has achieved national or international recognition and acclaim for outstanding achievement in his or her field as evidenced by reviews in major newspapers, trade journals, magazines or other published material;
 - has performed and will perform services as a fashion model for employers with a distinguished reputation;
 - has received significant recognition for achievements from organizations, critics, fashion houses, modeling agencies or other recognized experts in the field; and
 - commands a high salary or other substantial remuneration for services, evidenced by contracts or other reliable evidence; and
- copies of evidence establishing that the services to be performed require a fashion model of distinguished merit and ability and either:
 - involve an event or production which has a distinguished reputation; or
 - the services are as a participant for an organization or establishment that has a distinguished reputation or record of employing persons of distinguished merit and ability.

H-2A.

An H-2A is an alien coming temporarily to engage in temporary or seasonal agricultural employment. The petition must be filed by a U.S. employer or an association of U.S. agricultural producers named as a joint employer on the certification. It must be filed with:

- an original single valid temporary agricultural labor certification from the Department of Labor, or, if U.S. workers do not appear at the worksite, a copy of that agency's denial of a certification and appeal, and evidence that qualified domestic labor is unavailable; and
- copies of evidence that each named alien met the minimum job requirements stated in the certification when it was applied for.

H-2B.

An H-2B is an alien coming temporarily to engage in non-agricultural employment which is seasonal or intermittent, to meet a peak load need or to participate in a one-time occurrence. The petition must be filed by the U.S. employer with:

- either:
 - an original temporary labor certification from the Department of Labor on ETA 7-50A, or the Governor of Guam if the proposed employment is solely in Guam, indicating that qualified U.S. workers are not available and that employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers; or
 - an original notice from such authority that such certification cannot be made, along with evidence of the unavailability of U.S. workers and of the prevailing wage rate for the occupation in the U.S., and evidence overcoming each reason why the certification was not granted; and
- copies of evidence, such as employment letters and training certificates, that each named alien met the minimum job requirements stated in the certification when it was applied for.

H-3.

An H-3 is an alien coming temporarily to participate in a special education training program in the education of children with physical, mental, or emotional disabilities. Custodial care of children must be incidental to the training program. The petition must be filed by the U.S. employer with:

- a description of the training, staff and facilities, evidence the program meets the above conditions and details of the alien's participation in the program; and
- copies of evidence the alien is nearing completion of a baccalaureate degree in special education, already holds such a degree or has extensive prior training and experience in teaching children with physical, mental, or emotional disabilities.

H-3.

An H-3 is also an alien coming temporarily to receive other training from an employer in any field other than graduate education or training. The petition must be filed by the U.S. employer with:

- a detailed description of the structured training program, including the number of classroom hours

per week and the number of hours of on-the-job training per week;

- a summary of the prior training and experience of each alien in the petition; and
- an explanation of why the training is required, whether similar training is available in the alien's country, how the training will benefit the alien in pursuing a career abroad, what benefits you will derive from the training, and why you will incur the cost of providing the training without significant productive labor from the trainee(s).

L-1.

An L-1 is an alien coming temporarily to perform services in a managerial or executive capacity for the same corporation or firm, or for the parent, branch, subsidiary or affiliate of the employer which employed his or her abroad in an executive, managerial or specialized knowledge capacity for one continuous year within the three-year period immediately preceding the filing of the petition. Write L-1A in the classification requested block on the petition. See the petition requirements explained below.

L-1.

An L-1 is also an alien coming temporarily to perform services which entail specialized knowledge for the same corporation or firm or for the parent, branch, subsidiary or affiliate of the employer which employed him or her abroad in an executive, managerial or specialized knowledge capacity for one continuous year within the three-year period immediately preceding the filing of the petition. Specialized knowledge is special knowledge of the employer's product and its application in international markets or an advanced level of knowledge of the employer's processes and procedures. Write L-1B in the classification requested block on the petition. See the petition requirements explained below.

L Petition Requirements.

A U.S. employer or foreign employer may file the petition, but a foreign employer must have a legal business in the U.S. You must file your petition with:

- evidence of the qualifying relationship between the U.S. and foreign employer based on ownership and control, such as an annual report or copies of articles of incorporation, financial statements or stock certificates;
- an original letter from the alien's foreign qualifying

employer detailing his/her dates of employment, job duties, qualifications and salary and demonstrating that the alien worked for the employer for at least one continuous year in the three-year period preceding the filing of the petition in an executive, managerial or specialized knowledge capacity; and

- a description of the proposed job duties and qualifications and evidence the proposed employment is an executive, managerial or specialized knowledge capacity.

If the alien is coming to the U.S. to open a new office, also file the petition with copies of evidence the business entity in the U.S.:

- already has sufficient premises to house the new office;
- has or, upon establishment, will have the qualifying relationship to the foreign employer; and
- has the financial ability to remunerate the alien and to begin doing business in the U.S., including evidence about the size of the U.S. investment, the organizational structure of both firms, and, if the alien is coming as an L-1 manager or executive to open a new office, such evidence must establish that the intended U.S. operation will support the executive or managerial position within one year.

Blanket L Petition.

An L blanket petition simplifies the process of later filing for individual L-1A workers and L-1B workers who are specialized knowledge professionals. A specialized professional is a person who possesses specialized knowledge and is employed in a position which requires the theoretical and practical application of a body of highly specialized knowledge to fully perform the occupation and requires completion of a specific course of education culminating in a baccalaureate degree in a specific occupational specialty.

A blanket L petition must be filed by a U.S. employer who will be the single representative between INS and the qualifying organizations. Write LZ in the classification requested block. Do not name an individual employee. You must file your petition with copies of evidence that:

- you and your branches, subsidiaries and affiliates are engaged in commercial trade or services;
- you have an office in the U.S. that has been doing business for one year or more;
- you have 3 or more domestic and foreign branches, subsidiaries or affiliates;
- you and your qualifying organizations have obtained approved petitions for at least 10 "L"

managers, executives or specialized knowledge professionals during the previous 12 months or have U.S. subsidiaries or affiliates with combined annual sales of at least 25 million dollars, or have a U.S. work force of at least 1,000 employees.

After approval of a blanket petition, you may file for individual employees to enter as an L-1A executive/manager or L-1B specialized knowledge professional under the blanket petition. If the alien is outside the U.S., file Form I-129S. If the alien is already in the U.S., file an I-129 to request a change of status based on this blanket petition. An I-129 petition for a change of status or to request an extension of stay, if already an L-1, must be filed with:

- a copy of the approval notice for the blanket petition;
- a letter from the alien's foreign qualifying employer detailing his/her dates of employment, job duties, qualifications and salary for the 3 previous years; and
- if the alien is a specialized knowledge professional, a copy of a U.S. degree, a foreign degree equivalent to a U.S. degree or evidence establishing the combination of the beneficiary's education and experience is the equivalent of a U.S. degree.

Extending a Blanket L Petition. A U.S. employer may file a petition to extend its expiring blanket petition. Write **LZ** in the classification requested block. The extension petition must be filed with:

- a copy of the approval notice for the previous petition; and
- a summary of the employment of L-1 aliens admitted under the blanket petition during the preceding three years, listing, for each alien:
 - his or her name;
 - position(s) held during the period;
 - the employing entity;
 - the date of initial L-1 admission under the blanket; and
 - the date of final departure, if the alien has been transferred outside the U.S.

An I-129 to extend the stay of an individual employee is discussed Part 3 of these instructions.

O-1.

An O-1 is an alien coming temporarily who has extraordinary ability in the sciences, education, business or athletics (not including the arts, motion pictures or television). A U.S. employer or foreign employer may file the petition. Write **O-1A** in the classification requested block. You must file your petition with:

- an original written consultation with a peer group with expertise in the alien's area of ability (*see CONSULTATIONS*);
- a copy of any written contract between you and the alien or a summary of the terms of the oral agreement under which the alien will be employed;
- copies of evidence the services to be performed either:
 - primarily involve a specific scientific or educational project, conference, convention, lecture or exhibit sponsored by scientific or educational organizations or establishments;
 - involve events or activities which have a distinguished reputation or is a comparable newly organized event or activity; or
 - consist of a specific business project that requires an extraordinary executive, manager or highly technical person due to the complexity of the project; and
- a copy of evidence the alien has received a major, internationally-recognized award, such as a Nobel Prize, or copies of evidence of at least three of the following:
 - receipt of nationally or internationally recognized prizes or awards for excellence in the field of endeavor;
 - membership in associations in the field which require outstanding achievements, as judged by recognized international experts;
 - published material in professional or major trade publications or newspapers about the alien and his work in the field;
 - original scientific or scholarly research contributions of major significance in the field;
 - authorship of scholarly articles in the field in professional journals or other major media; or
 - evidence the alien commands a high salary or other high remuneration for services.

If the above standards do not readily apply to the alien's occupation, the petitioner may submit comparable evidence in order to establish the alien's eligibility.

O-1.

An O-1 is also an alien coming temporarily who has extraordinary ability in the arts or in the motion picture or television industry. A U.S. or foreign employer may file the petition. Write O-1B in the classification requested block on the petition. You must file your petition with:

- an original written consultation (see **CONSULTATIONS**) as follows:
 - if the petition is based on the alien's extraordinary ability in the arts, the consultation must be from a peer group in the alien's field of endeavor; and
 - if the petition is based on the alien's extraordinary achievements in the motion picture or television industry, separate consultations are required from a labor and a management organization with expertise in the alien's field of endeavor;
- a copy of any written contract between you and the alien or a summary of the terms of the oral agreement under which the alien will be employed;
- copies of evidence the services to be performed either:
 - primarily involve events, productions or activities which have a distinguished reputation or is a comparable newly organized event, production or activity; or
 - are in a lead, starring or critical role in an activity for an organization or establishment that has a distinguished reputation or record of employing extraordinary persons; and
- copies of evidence the alien has received, or been nominated for, significant national or international awards or prizes in the particular field, such as an Academy Award, Emmy, Grammy or Director's Guild Award, or copies of at least three of the following:
 - evidence the alien has performed or will perform services as a lead or starring participant in productions or events which have a distinguished reputation as evidenced by critical reviews, advertisements, publicity releases, publications, contracts or endorsements;
 - evidence the alien has achieved national or international recognition for achievements, as shown by critical reviews or other published materials by or about the individual in major newspapers, trade journals or magazines;
 - evidence the alien has a record of major commercial or critically acclaimed successes, as shown by such indicators as title, rating or standing in the field, box office receipts, credit for original research or product development, motion picture or television ratings and other occupational achievements reported in trade

journals, major newspapers or other publications;

- evidence the alien has received significant recognition for achievements from organizations, critics, government agencies or other recognized experts in the field in which the alien is engaged, with the testimonials clearly indicating the author's authority, expertise and knowledge of the alien's achievements; or
- evidence the alien has commanded or now commands a high salary or other substantial remuneration for services in relation to others in the field, as shown by contracts or other reliable evidence.

In the field of the arts, if the above standards do not readily apply to the alien's occupation, the petitioner may submit comparable evidence in order to establish the alien's eligibility.

O-2.

An O-2 is an alien coming temporarily, solely as an essential and integral part of the artistic or athletic performance of an O-1 artist or athlete because he or she performs support services which cannot be readily performed by a U.S. worker and which are essential to the successful performance of the O-1. The alien must also have significant prior experience with the O-1 alien. The petition must be filed in conjunction with the employment of an O-1 alien and must be filed by the same petitioner. Write O-2 in the classification requested block on the petition. You must file your petition with:

- an original written consultation (see **CONSULTATIONS**), as follows:
 - if the O-1 petition is based on the alien's extraordinary ability in the arts, the consultation must be from a peer group in the alien's field of endeavor; or
 - if the O-1 petition is based on the alien's extraordinary achievements in the motion picture or television industry, separate consultations are required from a labor and a management organization with expertise in the alien's field of endeavor;
- an original statement describing the alien's prior and current essentiality, critical skills and experience with the O-1;
- copies of a statement or affidavits from persons with first hand knowledge that the alien has had substantial experience performing the critical skills and essential support services for the O-1;
- a copy of any written contract between you and the alien or a summary of the terms of the oral

agreement under which the alien will be employed; and

- where the basis for the petition is continuity in an ongoing, specific motion picture or television production, *original* written statements from production executives attesting to the fact that significant principal photography has taken place outside the U.S. and will take place in the U.S. and to the fact that the continuing participation of the alien is essential to the successful completion of the production.

P-1.

A P-1 is an alien coming temporarily to perform at a specific athletic competition as an athlete, individually or as part of a group or team, at an internationally recognized level of performance. (See the separate instructions for accompanying personnel.) A U.S. employer or foreign employer may file the petition. Write P-1A in the classification requested block on the petition. You must file your petition with:

- an *original* written consultation from an appropriate labor organization (*see CONSULTATIONS*);
- a copy of the contract with a major U.S. sports league or team or a contract in an individual sport commensurate with national or international recognition in the sport;
- copies of evidence of at least two of the following:
 - participation to a substantial extent in a prior season with a major United States sports league;
 - participation in international competition with a national team;
 - participation to a substantial extent in a prior season for a United States college or university in intercollegiate competition;
 - a written statement from an official of a major U.S. sports league or an official of the governing body of the sport which details how the alien or team is internationally recognized;
 - a written statement from a member of the sports media or a recognized expert in the sport which details how the alien or team is internationally recognized;
 - the individual or team is ranked, if the sport has international rankings; or
 - the alien or team has received a significant honor or award in the sport.

P-1.

A P-1 is also an alien coming temporarily to perform as a member of an entertainment group that has been recognized internationally as outstanding in the discipline for a sustained and substantial period of time, and who has had a sustained and substantial relationship with the group (ordinarily for at least one year). (See the separate instructions for accompanying personnel.) 75% of the members of the group must have been members for at least one year. The petition may be filed by a U.S. or foreign employer. Write P-1B in the classification requested block on the petition. You must file your petition with:

- an *original* written consultation from an appropriate labor organization (*see CONSULTATIONS*);
- copies of evidence the group is internationally recognized in the discipline as demonstrated by the submission of evidence of the group's receipt, or nomination for, significant international awards or prizes for outstanding achievement, or copies of at least 3 of the following:
 - evidence the group has performed and will perform as a starring or leading entertainment group in productions or events which have a distinguished reputation, as evidenced by critical reviews, advertisements, publicity releases, publications or contracts;
 - evidence the group has achieved international recognition and acclaim for outstanding achievement in their field as evidenced by reviews in major newspapers, trade journals, magazines or other published material;
 - evidence the group has performed and will perform services as a leading or starring group for organizations and establishments that have a distinguished reputation;
 - evidence the group has a record of major commercial or critically acclaimed successes, as evidenced by indicators such as ratings; box office receipts; record, cassette or video sales; and other achievements as reported in trade journals, major newspapers or other publications;
 - evidence the alien has received significant recognition for achievements from critics, organizations, government agencies or other recognized experts in the field in which the alien is engaged, with the testimonials clearly indicating the author's authority, expertise and knowledge of the alien's achievements; or
 - evidence the group has commanded and now commands a high salary or other substantial remuneration for services comparable to others similarly situated in the field, as evidenced by contracts or other reliable evidence.

By filing a petition for a P-1 group, the petitioner certifies that the group has been established and performing regularly for a period of at least one year, and that at least 75% of the members of the group have been performing with the group on a regular basis for at least one year. However, this one year group membership requirement does not apply to alien circus personnel who perform as part of a circus or circus group, or who constitute an integral and essential part of the performance of such circus or circus group, provided that the alien or aliens are coming with or to join a circus that has been recognized nationally as outstanding for a sustained and substantial period of time.

INS may waive the one year relationship requirement for an alien who, because of illness or unanticipated and emergent circumstances, replaces an essential member of a P-1 entertainment group or for an alien who augments the group by performing a critical role.

In special circumstances, INS may waive the international recognition requirement if the entertainment group has been recognized nationally as being outstanding in its discipline for a sustained and substantial period of time.

If you are requesting a waiver on either of these grounds, clearly indicate this on the *O and P supplement* to your petition, and explain the basis for your request in an attachment.

P-2.

A P-2 is an alien coming temporarily to perform as an artist or entertainer, individually or as part of a group, under a reciprocal exchange program between an organization in the U.S. and an organization in another country. (See the separate instructions for accompanying personnel.) The petition must be filed by the sponsoring organization or employer in the U.S. You must file your petition with:

- an original written consultation with an appropriate labor organization (see *CONSULTATIONS*);
- a copy of the formal reciprocal exchange agreement between the U.S. organization(s) sponsoring the aliens and the organization(s) in a foreign country which will receive the U.S. artist or entertainers;
- a statement from the sponsoring organization describing the reciprocal exchange, including the name of the receiving organization abroad, names and occupations of U.S. artists or entertainers being sent abroad, length of their stay, activities in which they will be engaged and the terms and conditions of their employment; and
- copies of evidence the aliens and the U.S. artists or entertainers are artists with comparable skills and

that the terms and conditions of employment are similar.

P-3.

A P-3 is an alien coming temporarily to perform, teach or coach as an artist or entertainer, individually or as part of a group, under a commercial or noncommercial program that is culturally unique. (See the separate instructions for accompanying personnel.) The petition must be filed by the sponsoring organization or employer in the United States. You must file your petition with:

- an original written consultation from an appropriate labor organization (see *CONSULTATIONS*);
- copies of documentation that all of the performances or presentations will be culturally unique events, and by one of the following:
 - affidavits, testimonials or letters from recognized experts attesting to the authenticity of the alien's or group's skills in performing, presenting, coaching or teaching art forms; or
 - documentation that the performance of the alien or group is culturally unique as evidenced by actual reviews in newspapers, journals or other published materials about the alien or group.

P-1, P-2 or P-3 Accompanying Support Personnel.

Accompanying support personnel are highly skilled aliens coming temporarily as an essential and integral part of the competition or performance of a P-1, P-2 or P-3, or because they perform support services which cannot be readily performed by a U.S. worker and which are essential to the successful performance or services by the P-1, P-2 or P-3. The accompanying personnel must also each have substantial prior work experience with the P-1, P-2 or P-3.

The petition must be filed in conjunction with the employment of a P-1, P-2 or P-3 alien. Write P-1S, P-2S or P-3S in the classification requested block on the petition. You must file your petition with:

- an original written consultation with a labor organization in the skill in which the alien will be involved (see *CONSULTATIONS*);
- a statement describing the alien's prior and current essentiality, critical skills and experience with the P-1, P-2 or P-3;
- copies of statements or affidavits from persons with first hand knowledge that the alien has had substantial experience performing the critical skills

and essential support services for the P-1, P-2 or P-3; and

- a copy of any written contract between you and the alien or a summary of the terms of the oral agreement under which the alien will be employed.

Q.

A Q is an alien coming temporarily to participate in an international cultural exchange program approved by the Attorney General for the sharing of the attitude, customs, history, heritage, philosophy and/or traditions of the alien's country of nationality.

The culture sharing *must* take place in a school, museum, business or other establishment where the public is exposed to aspects of a foreign culture as part of a structured program. The work component of the program may *not* be independent of the cultural component but must serve as the vehicle to achieve the objectives of the cultural component.

A U.S. employer or foreign employer may file the petition; however, a foreign employer's petition must be signed by a U.S. citizen or permanent resident employed by the qualifying employer on a permanent basis in an executive, managerial or supervisory capacity for the prior year.

If you have not had a full "Q" petition approved within the past 15 months for the same international cultural exchange program, you must file your petition with:

- copies of evidence you:
 - maintain an established international cultural exchange program;
 - have designated a qualified employee to administer the program and serve as liaison with INS;
 - have been doing business in the U.S. for the past two years;
 - will offer the alien wages and working conditions comparable to those accorded local domestic workers similarly employed;
 - employ at least 5 full-time U.S. citizen or permanent resident workers in the same or a closely related capacity; and
 - have the financial ability to remunerate the participant(s), as shown by a copy of your most recent annual report, business income tax return or other form of certified accountant's report; and
- copies of catalogs, brochures or other types of material which illustrate that:
 - the cultural component is designed to give an overview of the attitude, customs, history,

heritage, philosophy, tradition and/or other cultural attributes of the participant's home country;

- the employment or training takes place in a public setting where the sharing of the culture of their country of nationality can be achieved through direct interaction with the American public; and
- the American public will derive an obvious cultural benefit from the program.

If the proposed dates of employment are within 15 months of the approval of a prior "Q" petition filed by you for the same international cultural exchange program and that earlier petition was filed with the above evidence of the program, you may submit a copy of the approval notice for that prior petition in lieu of the evidence about the program required above.

DRAFT

2. CLASSIFICATIONS WHICH ONLY REQUIRE A PETITION TO CHANGE STATUS, EXTEND STAY OR CHANGE EMPLOYMENT.

The following classifications do not require a petition for new employment *if the alien is outside the U.S.* The alien should instead contact a U.S. Consulate for information about a visa or admission. Use this form to petition for a change of status, extension of stay or a change in employment.

A petition for change of status to one of the classifications described in this part must be filed with the initial evidence listed below and with the initial evidence required by the separate instructions for all petitions involving change of status.

A petition for an extension of stay must be filed with the initial evidence listed below and with the initial evidence required by the separate instructions for all petitions for extension. However, a petition for an extension based on unchanged, previously approved employment need only be filed with the initial evidence required by the separate extension of stay instructions.

E-1.

An E-1 is a national of a country which has a treaty of friendship, commerce, and navigation with the U.S. or has otherwise been accorded such status (i.e. Australia, Sweden), who is coming to the U.S. to engage in substantial trade between the U.S. and the alien's country of nationality.

Substantial trade means that more than 50% the trade of the U.S. company must be between the U.S. company and the treaty country and that there is a continued course of international trade. See the petition requirements explained below.

E-2.

An E-2 is a national of a country which has a treaty of friendship, commerce and navigation, or a bilateral investment treaty or agreement with the U.S. or which has otherwise been accorded such status (i.e. Australia, Sweden), who is coming to the U.S. to direct and develop the operations of an enterprise in which he/she has invested, or is in the process of investing, substantially.

A substantial investment is one in which personal funds or assets are put at risk in a real operating enterprise which generates services or goods. You must show that you are able to direct and develop the enterprise by having control over the business. You must also show that the investment is not your main source of income or that the proceeds from the investment are significantly greater than a subsistence income. See the petition requirements explained below.

E-1 or E-2.

An E-1 or E-2 may also be an employee of a qualified treaty alien or treaty company. If so, the alien must be an executive or manager, an individual with specialized qualifications that are essential to the efficient operation of the employer's business enterprise, a highly trained technician or start-up personnel (E-2 only). See the petition requirements explained below.

E Petition requirements.

A principal treaty trader or investor or the qualified employer may file the petition. You must file your petition with copies of evidence of:

- ownership and nationality, including lists of investors with current status and nationality, stock certificates, certificates of ownership issued by the commercial section of a foreign embassy and reports from a certified professional accountant (CPA);
- substantial trade, if filing for an E-1, including copies of three or more of the following: bills of lading, customs receipts, letters of credit, insurance papers documenting commodities imported, purchase orders, carrier inventories, trade brochures or sales contracts;
- substantial investment, if filing for an E-2, including copies of partnership agreements (with a statement on proportionate ownership), articles of incorporation, payments for the rental of business premises or office equipment, business licenses, stock certificates, office inventories (goods and equipment purchased for the business), insurance appraisals, advertising invoices, annual reports, net worth statements from certified professional accountants, business bank accounts containing funds for routine operations and funds held in escrow; and
- if filing for an employee, evidence that he/she is a manager or executive or evidence of special knowledge, skills, training or education, such as certificates, diplomas or transcripts, letters from employers describing job titles, duties, and the

level of education and knowledge required, operators' manuals and, for non-executive/managerial employees, evidence that qualified U.S. workers are not available. Proven shortages of U.S. workers trained in similar skills may be given favorable consideration.

R-1.

An R-1 is an alien who, for at least 2 years, has been a member of a religious denomination having a bona fide nonprofit, religious organization in the U.S., coming temporarily to work solely:

- *as a minister of that denomination;*
- *in a professional capacity in a religious vocation or occupation for that organization; or*
- *in a religious vocation or occupation for the organization or its nonprofit affiliate.*

The petition must be filed by a U.S. employer with:

- *an original letter from the authorizing official of the religious organization establishing that the proposed services and alien qualify above;*
- *an original letter or letters from the authorizing officials of the religious denomination or organization attesting to the alien's membership in the religious denomination and explaining, in detail, the person's religious work, all employment during the past 2 years and the proposed employment; and*
- *a copy of the tax-exempt certificate showing that the religious organization, and any affiliate which will employ the person, is a bona fide nonprofit, religious organization in the U.S. and is exempt from taxation in accordance with section 501(c)(3) of the Internal Revenue Code of 1986.*

TC.

A TC is a Canadian citizen coming to the U.S. temporarily as a professional under the provisions of the United States - Canada Free Trade Agreement. A U.S. employer or a foreign employer may file the petition. You must file your petition with:

- *an original letter stating the activity to be engaged in, the purpose of entry, the anticipated length of stay and the arrangements for remuneration; and*
- *copies of evidence the alien meets the educational and/or licensing requirements for the profession or occupation.*

DRAFT

3. FILING INSTRUCTIONS.

FILLING OUT THE FORM.

Please answer all questions by typing or clearly printing in black ink. Complete the basic form and the appropriate supplement. (There is no supplement for TC workers.) Indicate that an item is not applicable with "N/A."

If you need extra space to answer any item, attach a sheet of paper with your name and IRS Tax number and indicate the number or title of the item to which the answer refers.

You must file your petition with the required Initial Evidence. The petition must be properly signed and filed with the proper fee. Submit the petition in duplicate if you check box "a" or "b" in question 4 of Part 2 of the form.

Part 1.

This part requires information about the employer who is filing the petition. Give the employer's business name, address and related information.

Filing by Agents.

A U.S. individual or company in business as an agent may act as the actual employer, in which case the normal filing instructions apply. In addition, an agent may file a petition for types of workers who are traditionally self-employed or who traditionally use an agent to arrange short-term employment with numerous employers. An association of U.S. agricultural producers who use agricultural services may file an H-2A petition for producer members as their agent.

In addition to other initial evidence requirements, a petition filed by an individual or company as an agent must include a complete itinerary of the proposed services or engagements, including dates, names and addresses of the actual employers and the locations where the services will be performed. The agent must fully explain the terms and conditions of the employment and must provide any required documentation.

An agent filing a petition should give its business name, address and related information in Part 1, and explain in the relating supplement that it is acting as an agent.

Joint Employers.

Each employer must normally file a separate petition unless an established agent files the petition (see above). However, if an association of U.S. agricultural producers

who use agricultural products is named as a joint or sole employer on an H-2A labor certification, the association may file the petition, and the certifications may be used for the certified job opportunities of any of its producer members. If the petition is approved, the workers may be transferred among the producer members to perform the services named in the certification.

Part 2.

1. Requested Nonimmigrant Classification.

Indicate the specific classification you are requesting. Use the specific designations listed in the instructions, such as H-1B1.

2. Basis for Classification.

Check box "a" except:

- if the worker(s) *already* have the same status based on a prior petition you filed, then:
 - check box "b" if the only change from the prior petition is to extend the length of time they will be employed; or
 - check box "c" if you are filing to amend a petition based on any other changes in employment; or
- if the worker(s) *already* have the same status based on a prior petition filed by someone else and you seek to employ them concurrently during the same period, check box "d".

If you are filing a blanket L petition, check box "a."

3. Prior Petition Number.

In any case where the worker(s) previously entered the U.S. in the classification you are now requesting, please indicate, on an attachment, any other prior petitions of which you are aware. The fact that the Service has previously found a worker to qualify for a classification is important to our review and can often speed our review process. If you checked other than box "a" in question 2, you must list the most recent petition receipt number for the worker(s).

4. Requested Action.

If the worker(s) are already in the U.S. in a different status and you are applying to change their status in the U.S., check box "b."

If the workers are already in the U.S. and already hold the status you are requesting, whether based on a prior petition you filed or based on a prior petition filed by someone else, and you are applying to extend their stay, check box "c."

In all other instances, including filing a blanket L petition, check box "a."

If you file a petition and check box "a" and the worker(s) enter the U.S. before the petition is approved, you may file a new petition asking to change their status. You should reference the original petition in your new one and, if the first petition was approved in the interim, attach a copy of the approval notice. Review of the second petition will focus on whether a change of status should be granted, since it is the position of the Service that workers should normally wait and obtain the required visa.

Change of Status.

In addition to the initial evidence for the classification you are requesting, any petition requesting a change of status for an alien in the U.S. must be filed with a copy of the Form I-94, Nonimmigrant Arrival/Departure Record, of the employee(s). A nonimmigrant who must have a passport to be admitted must keep that passport valid during his/her entire stay. If a required passport is not valid, file a full explanation with your petition.

For your information, the following are not eligible to change status:

- an alien admitted under a visa waiver program;
- an alien in transit (C) or in transit without a visa (TWOV);
- a crewman (D);
- a fiancé(e) or his/her dependent (K);
- a J-1 exchange visitor whose status was for the purpose of receiving graduate medical training;
- a J-1 exchange visitor subject to the foreign residence requirement who has not received a waiver of that requirement; and
- an M-1 student to an H classification, if training received as an M-1 helped him/her qualify for H classification.

Extension of Stay.

A petition to extend the stay of a worker must be filed with the appropriate supplement and with:

- a copy of each worker's Form I-94, Nonimmigrant Arrival/Departure Record;
- the evidence required for a new petition; and
- your letter explaining the reasons for the extension.

However, where the circumstances of your employment of the worker(s) have not changed, except for the extended duration of employment, instead of filing all the evidence required for an initial petition, you need only file the petition and supplement, a copy of each Form I-94, a letter explaining the reasons for the extension and:

- if for H-1A status, submit a current copy of the Department of Labor's notice of acceptance of the petitioner's attestation;
- if for H-1B status, submit a certified labor condition application for the specialty occupation

valid for the period of time requested;

- if for H-2A status, submit a labor certification valid for the dates of the extension, unless it is based on a continuation of employment authorized by the approval of a previous petition filed with a certification and the extension will last no longer than 2 weeks; or
- if for H-2B status, submit a labor certification valid for the dates of the extension.

A nonimmigrant who must have a passport to be admitted must keep that passport valid during his or her entire stay. Thus, in addition to the evidence required for any extension petition, if a required passport is not valid, you must file a full explanation with the petition.

5. Total Number of Workers in Petition.

Normally you can file for one worker per petition. However, in the classifications listed below, you may include more than 1 worker in a petition if all the following apply:

- you are requesting the same action for all of them in question 4 (in other words, they all require an extension of stay, or all require a change of status, or all will apply for a visa or admission to the U.S.);
- the dates of proposed employment are the same and they will all be employed at the same place or places; and
- they all fall within one of the following categories:
 - H-2A, if they are all included on the same labor certification and will all perform the same duties;
 - H-2B, if they are all included on the same labor certification and will all perform the same duties;
 - H-3, if they will all receive the same training;
 - O-2, if they will provide support to the same O-1 alien consistent with the O-1 alien's itinerary;
 - P-1A, if they are all members of the same athletic group or team;
 - P-1B, if they are all members of the same entertainment group;
 - P-2, if they are all members of the same group;
 - P-3, if they are all members of the same entertainment group;
 - P-1S, if they will all accompany the same P-1 alien or group consistent with the P-1 itinerary;
 - P-2S, if they will all accompany the same P-2 alien or group consistent with the P-2 itinerary;
 - P-3S, if they will all accompany the same P-3

alien or group consistent with the P-3 itinerary;
or

- Q, if they will all be involved in the same international cultural exchange program.

You cannot mix categories. For example, you cannot petition for O-1 and O-2 workers in one petition.

You also cannot mix actions. For example, you cannot file a general petition for one worker and an extension for another worker. In such instances, you must file separate petitions.

6. Total Number of Worker's Dependents in Petition.

You do not need to name the members of a worker's family in a general petition. If you are filing for an extension of stay or change of status for one worker and the worker's dependents are in the U.S. in derivative status, you may include them in the petition *if they require the same action* (i.e. also need an extension of stay or also require a change of status to a derivative status).

In Part 2 of the petition, indicate the number of dependents included who are in the U.S. who are applying for the same action as the worker.

Name each dependent included in the petition on *Supplement 1* and give their relationship to the worker in the appropriate block. Also file a copy of each dependent's Form I-94, Nonimmigrant Arrival Departure Document. The information in the prior sections about passport validity and explanation also applies to any dependent included in the petition.

If you are filing for more than one worker in a petition, you cannot include any of their dependents in the petition. In such a case, you can either file separate petitions for each worker so that you can include the dependents, or the family members of each worker can file a separate application on Form I-539.

If the dependents are already in the U.S. but require a different action, they should file separately on Form I-539. Examples would be where a dependent requires an extension of stay for a period already given to the relating worker or requires a change of status to a status already held by the relating worker.

Part 3.

Complete this information with regard to the worker you are filing for. If you are filing for more than one worker in a single petition, give the required information about one of the workers in Part 3 and use the supplement

provided for each of the others you are filing for. If you are filing for one worker and are including his or her dependents, give the required information about the worker in Part 3 and use the supplement provided to provide the information about the dependents. Clearly identify them as dependents on the supplement.

The A# referred to in the petition form is the person's alien registration number, if any. The I-94# is the number on the Nonimmigrant Arrival-Departure Document which is given to a person when he or she enters the U.S. If the person was not given an I-94, write "none."

Filing for Unnamed Workers.

All workers must normally be named in a petition. However, in the classifications listed below, you may file for unnamed workers if you are not filing for a change of status or extension of stay for the workers.

- An H-2A petition may include an unnamed alien or aliens if they are unnamed on the labor certification.
- An H-2B petition for more than one worker may include unnamed aliens in emergent situations where you establish in the petition that you cannot yet provide names due to circumstances which you could not anticipate or control.
- A blanket L petition should not name individual workers.

Where some or all of the workers are not named, specify the total number of workers in the petition and the number who are not named. You will have to name those workers at the consulate or port of entry and, at that time, establish that they individually meet the conditions of the relating labor certification and qualify for the visa or admission.

Where aliens must be named and the petition will include more than one worker, you can file separate petitions naming those you have identified first and then subsequently file other petitions naming others, or you can wait and file one petition. If you file multiple petitions, you must pay the petition filing fee for each petition and must file a copy of the same labor certification with each petition. In addition, each subsequent petition must reference all previously filed petitions using the certification.

Part 4.

If we approve your petition, we will notify the U.S. consulate or port of entry you name in Part 4 so the worker(s) can obtain a visa or be processed at the inspection facility without a visa. (Many aliens require a visa to enter the U.S. For more information about visa

requirements, contact your local INS office or U.S. Consulate.

If you are filing for more than one worker in a petition and they will apply for visas at different U.S. consulates, or, if they do not require a visa, will apply for admission at different inspection facilities (ports-of-entry) without a visa, give the names of the consulate or inspection facility the majority of the workers will use in this part of the form. For each worker who will apply at a different consulate or inspection facility, give that office in *Supplement 1* for that worker.

If the worker(s) are already in the U.S. and you file for a change of status, we will notify the consulate or port of entry if we find the worker(s) eligible for the classification but not eligible for the change of status or extension of stay.

If we approve a requested change of status or extension of stay, we will *not* notify a consulate or inspection facility since the worker(s) are already in the U.S. If you wish us to notify a consulate or inspection facility for the purpose of a subsequent trip, please file Form I-824, Application for Action on an Approved Application or Petition."

You may file that application with this petition.

The remaining questions in this part help us link relating petitions you may have filed together and help us determine eligibility for the requested classification.

Part 5.

This part requests specific information about the proposed employment to help us determine eligibility. If you need additional space to answer any of these questions, attach a separate sheet of paper with your name and IRS Tax #.

For type of business, describe the basic nature of your business, such as hospital or bank. For other compensation, describe any compensation offered in addition to wages, such as commissions, bonuses, housing or transportation, and estimate the dollar value.

Multiple Work Locations.

If you are filing a petition for worker(s) to perform services or labor or receive training in more than one location, you must include a full itinerary with the dates and locations where the services or training will take place.

Dates of Intended Employment.

Give the dates of the proposed employment or training.

For O-1, O-2, P-1, P-2 or P-3 workers, you should include probable bookings and any information available about those bookings. This will allow the Service to consider these probable dates in reviewing the petition and, if the petition is approved, to include those activities in the approval. Similar engagements which are later added to the itinerary during the validity of an O-1, O-2, P-1, P-2 or P-3 petition will not require the filing of a new petition if within the validity period of the petition. However, you must show continuity between the engagements listed in the petition.

For your information, the following chart lists the maximum possible time the different types of nonimmigrant workers may initially be admitted for, how long an extension they may be given, and any overall limits on the length of their nonimmigrant stay. The dates of intended employment in your petition should be based on the actual proposed dates of employment.

Please note: The table on the facing page indicates theoretical maximum periods for initial stay and extensions. The period you request in your petition should be based on the actual proposed activities.

In the case of an O-1, O-2, P-1, P-2 or P-3 petition for a series of events, if there is a significant break between events during the petition validity period you request, you must demonstrate that there is continuity between the events such that the individual(s) should not be required to depart the U.S. and return based on a separate petition for the later event(s).

The actual stay of an individual is limited to the validity of the petition upon which his or her status is based. An approved petition is valid only for the employment, events and training outlined in the petition.

<i>Maximum Stay</i>		
CLASS	INITIAL STAY	EXTENSIONS OF STAY
H-1A	Up to 3 years.	Increments of up to 2 years. Total stay limited to 5 years, but a 6th year may be granted in extraordinary circumstances.
H-1B1	Up to 3 years.	Increments of up to 3 years. Total stay limited to 6 years.
H-1B2	Up to 5 years.	Increments of up to 5 years. Total stay limited to 10 years.
H-1B3	Up to 3 years.	Increments of up to 3 years. Total stay limited to 6 years.
H-2A H-2B	Same as validity of labor certification, with maximum of 1 year.	Same as validity of labor certification. Total stay limited to 3 years.
H-3	Special Education Training - up to 18 months. Other Trainee - up to 2 years.	Special Education Trainee - total stay limited to 18 months. Other Trainee - total stay limited to 2 years.
L-1A	Coming to existing office- up to 3 years. Coming to new office- up to 1 year.	Increments of up to 2 years. Total stay limited to 7 years.
L-1B	Coming to existing office- up to 3 years. Coming to new office- up to 1 year.	Increments of up to 2 years. Total stay limited to 5 years.
O-1A O-1B O-2	Up to 3 years.	Increments of up to 1 year.
P-1B	Individual athlete - up to 5 years. Athletic groups - up to 1 year.	Individual athlete - Increments of up to 5 years. Total stay limited to 10 years. Athletic group - Increments of 1 year.
Q	Up to 15 months.	Total stay limited to 15 months.
E-1 E-2	Up to 2 years.	Increments of up to 2 years.
R-1	Up to 3 years.	Increments of up to 2 years. Total stay limited to 5 years.
All other	Up to 1 year.	Increments of up to 1 year.

CONSULTATIONS.

Noted classifications require a written consultation from a recognized peer group, labor organization (union) and or management organization regarding the nature of the work to be done and the alien's qualifications. This consultation is required by the Immigration and Nationality Act to ensure that circumstances of the U.S. labor market are considered when making a decision on a petition. The consultation must be from a peer group, union or management organization within the United States, preferably from a national organization.

An O-1B or O-2 petition for an alien in the motion picture or television industry must have two separate written consultations, one from labor organization and another from a management organization. Each must have expertise in the alien's field of endeavor.

All other categories requiring a written consultation require a written consultation from a labor organization with expertise within the alien's field of endeavor.

A required consultation must be filed with the petition. However, in emergency circumstances, you may file without the consultation and request that the Service expedite the consultation procedures for you.

In such a case you must clearly indicate on your petition that you are requesting an expedited consultation, and fully explain and document the basis for your extraordinary request, since in such a circumstance time will not allow the Service to request more information from you before deciding whether your request is warranted. You must demonstrate that circumstances

have arisen which you could not anticipate or control and that those circumstances mean you cannot reasonably obtain the required consultation through normal channels prior to filing the petition. An example of such circumstances would be where a starring performer becomes ill and a last minute replacement must be arranged.

To ensure that this process is only used in appropriate circumstances, if you request an expedited consultation and the Service finds that insufficient grounds exist to excuse the lack of a valid consultation obtained through normal channels, your petition will be denied for lack of the required consultation. In such a circumstance, you will have to file a new petition with the required written consultation.

In an instance where you cannot find a recognized peer group, union or management organization that does consultations, you should clearly indicate that in your petition. If no such organizations exist, the Service will process the petition. However, if such organizations do exist, we may deny the petition for lack of the consultation or we may notify you to obtain the required consultation.

This process, combined with the wait for the consultation, will mean a much longer overall processing time, so we encourage you to attempt to obtain any necessary consultation before you file your petition.

TRANSLATIONS.

Any foreign language document must be accompanied by a full English translation, which the translator has certified as complete and correct, and by the translator's certification that he or she is competent to translate from the foreign language into English.

SUBMITTING COPIES INSTEAD OF ORIGINAL DOCUMENTS.

If these instructions state that a copy of a document may be filed with this petition and you choose to send us the original, we may keep that original for our records.

RETURN TRANSPORTATION LIABILITY.

The Immigration and Nationality Act makes the employer, in an H-1B or H-2B or H-2B petition, and the employer and petitioner, in an O or P petition, liable for

the reasonable cost of return transportation for an alien who is dismissed before the end of the authorized employment.

WHEN TO FILE.

File your petition as soon as possible but no more than 6 months before the proposed employment will begin or the extension of stay is required. If you do not submit your petition at least 45 days before the employment will begin, petition processing and subsequent visa issuance may not be completed before the alien's services are required or previous employment authorization ends.

WHERE TO FILE.

Mail this petition to the appropriate INS Service Center, except that:

- if the person is applying for admission as an L-1 under the U.S.-Canada Free Trade Agreement, the petition may be filed at the port of entry when the person applies for entry; and
- if the services or training will be solely in Guam or the Virgin Islands, file the petition at the local INS office there.

Generally, you should mail your petition to one of our Service Centers based on the place where the proposed employment or training will be conducted. However:

- a petition for services or training that will occur in more than one place, should be mailed to the Service Center with jurisdiction over the petitioner's own primary place of business;
- a petition filed by a foreign employer with no U.S. address for workers who will work in more than one place should be mailed to the Service Center with jurisdiction over the first place the alien(s) will be employed in the U.S.;
- a petition filed by an agent should be mailed to the Service Center with jurisdiction over the agent's own primary place of business;
- an O or P petition should be mailed to the Service Center with jurisdiction over the petitioner's own primary place of business;
- an L *blanket* petition should be mailed to the Service Center with jurisdiction over the petitioner's locations; an L petition based on a blanket L petition, and any petition to extend a blanket L petition, should be mailed to the same Service Center which processed the original blanket petition.

The jurisdictions and addresses of the Service Centers for filing Form I-129 petitions are as follows:

If the work or training will be in Alabama, Connecticut, Delaware, District of Columbia, Florida, Georgia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Vermont, Virginia or West Virginia, mail your petition to:

USINS Eastern Service Center
75 Lower Welden Street
St. Albans, VT 05479-0129

If the work or training will be in Arizona, California, Hawaii or Nevada, mail your petition to:

USINS Western Service Center
P.O. Box 101129
Laguna Niguel, CA 92607-0129

If the work or training will be elsewhere in the United States, mail your petition to:

USINS Northern Service Center
P.O. Box 82521
Lincoln, NE 68501-2521

General rules for submitting fees:

The fee must be submitted in the exact amount. It cannot be refunded. **DO NOT MAIL CASH.** All checks and money orders must be drawn on a bank or other institution located in the United States and must be payable in United States currency. The check or money order should be made payable to the Immigration and Naturalization Service, except that:

- If you live in Guam and are filing this application in Guam, make your check or money order payable to the "Treasurer, Guam."
- If you live in the Virgin Islands and are filing this application in the Virgin Islands, make your check or money order payable to the "Commissioner of Finance of the Virgin Islands."

Checks are accepted subject to collection. An uncollected check will render the application and any document issued invalid. A charge of \$5.00 will be imposed if a check in payment of a fee is not honored by the bank on which it is drawn.

FEE.

The petition fee is based on the type of action you request in *Part 2, Question 4* of the petition form.

There is a basic petition fee based on the type of action you are requesting, and an additional fee for *each* worker and dependent included in your petition. Please write one check for the entire amount due for a petition, and separate checks for each petition.

If you are filing for one worker, the fee is:

- **\$120 + \$10 for each dependent.** *Do not* include dependents in your petition if you check box "a." (See the instructions on including dependents in *Part 3* of this pamphlet for more information.)

For example, if you are including the worker's spouse and one child, the total fee is \$140.

If you are filing for more than one worker, the fee is:

- **\$100 + \$20 for each worker;**

For example, if you are filing for 10 workers, the total fee is \$300 (\$100 + \$20 per worker). Please note: Do not include dependents of a worker in a petition for more than one worker. (See the instructions on dependents in *Part 3* of this pamphlet for more information.)

The fee for a blanket L petition is \$120.

4. Other Information.

Processing Information.

Acceptance. Any petition that is not signed or is not accompanied by the correct fee will be rejected with a notice that the petition is deficient. You may correct the deficiency and resubmit the petition. However, a petition is not considered properly filed until accepted by the Service.

Initial processing and requests for more information or interview. Once a petition has been accepted, it will be checked for completeness, including submission of the required initial evidence. If you do not completely fill out the form or file it without required initial evidence, you will not establish a basis for eligibility, and we may deny your petition. At a minimum it will significantly delay processing your petition.

We may request more information or evidence beyond that indicated in these instructions, or we may request that you appear at an INS office for an interview. We may also request that you submit the originals of any copies. We will return these originals when they are no longer required.

Decision. The decision on a petition involves separate determinations of whether you have established that the alien is eligible for the requested classification based on the proposed employment, and whether he or she is eligible for any requested change of status or extension of stay. You will be notified of the decision in writing.

Penalties.

If you knowingly and willfully falsify or conceal a material fact or submit a false document with this request, we will deny the benefit you are filing for and may deny any other immigration benefit. In addition, you will face severe penalties provided by law and may be subject to criminal prosecution.

Privacy Act Notice.

We ask for the information on this form and the associated evidence to determine if you have established eligibility for the immigration benefit you are filing for. Our legal right to ask for this information is in 8 USC 1154, 1184 and 1258. We may provide this information to other government agencies. Failure to provide this information and any requested evidence may delay a final decision or result in denial of your request.

Paperwork Reduction Act Notice.

We try to create forms and instructions that are accurate, and can be easily understood and which impose the least possible burden on you to provide us with information. Often this is difficult because some immigration laws are very complex. The estimated average time to complete and file this application is as follows: (1) 30 minutes to learn about the law and form; (2) 25 minutes to complete the form; and (3) 60 minutes to assemble and file the petition; for a total estimated average of 115 minutes per petition. If you have comments regarding the accuracy of this estimate or suggestions for making this form simpler, you can write to both the Immigration and Naturalization Service, 425 I Street, N.W., Policy Directives and Instructions Branch (HQPDI), Washington, D.C. 20536; and the Office of Management and Budget, Paperwork Reduction Project, OMB No. 1115-0168, Washington, D.C. 20503.

DRAFT

U.S. Department of Justice
Immigration and Naturalization Service**DRAFT**OMB #1115-0168
Petition for a Nonimmigrant Worker**START HERE - Please Type or Print - See the separate instructions.****Part 1. Information about the employer filing this petition.**

If the employer is an individual, use the top name line. Organizations should use the second line.

Family Name	Given Name	Middle Initial
Company or Organization Name		
Address - Attn:		
Street Number and Name		Suite #
City	State or Province	
Country	ZIP/Postal Code	
IRS Tax #		

Part 2. Information about this petition.

(See the instructions to determine the fee)

- Requested Nonimmigrant Classification:
(write classification symbol at right) _____
- Basis for Classification (check only one)
 - ☐ New employment
 - ☐ Continuation of previously approved employment without change
 - ☐ Change in previously approved employment
 - ☐ New concurrent employment
- Prior Petition Number: _____
- Requested Action: (check only one)
 - ☐ General petition - No change of status nor extension of stay requested.
 - ☐ Change the worker(s) status and extend their stay since they are all now in the U.S. in another status (see instructions for limitations).
 - ☐ Extend the stay of the worker(s) since they now hold this status.
- Total Number of Workers in Petition: _____
- Total Number of Dependents in Petition: _____

Part 3. Information about the person(s) you are filing for.

See the instructions for where you can file for more than one person.

If an entertainment group,
give their group name.

Family Name	Given Name	Middle Initial
Date of Birth (Month/Day/Year)	Country of Birth	
Social Security #	A #	
If in the United States, complete the following:		
Date of Arrival (Month/Day/Year)	I-94 #	
Current Nonimmigrant Status	Expires (Month/Day/Year)	

FOR INS USE ONLY

Returned	Receipt
Resubmitted	
Reloc Sent	
Reloc Rec'd	
Interviewed	
☐ Petitioner	
☐ Beneficiary	
Class: _____	
# of Workers: _____	
Priority Number: _____	
Validity Dates: From _____ To _____	
☐ Classification Approved	
☐ Consulate/POE/PFI Notified	
At: _____	
☐ Extension Granted	
☐ COS/Extension Granted	
Partial Approval (explain)	
Action Block	
To Be Completed by Attorney or Representative, if any	
☐ Fill in box if G-28 is attached to represent the applicant	
VOLAG#	
ATTY State License #	

Part 4. Processing Information.

- a. If the person named in Part 3 is outside the U.S. or in case a requested extension of stay or change of status cannot be granted, give the U.S. consulate or inspection facility you want notified if this petition is approved.

Type of Office (check one): ☐ Consulate ☐ Pre-flight inspection ☐ Port of Entry
Office Address (City) _____ U.S. State or Foreign Country _____

Person's Foreign Address _____

- b. Does each person in this petition have a valid passport?

☐ Not required to have passport

☐ No - explain on separate paper ☐ Yes

- c. Are you filing any other petitions with this one?

☐ No

☐ Yes - How many? _____

- d. Are applications for replacement/initial I-94's being filed with this petition?

☐ No

☐ Yes - How many? _____

- e. Are I-539 applications by dependents being filed with this petition?

☐ No

☐ Yes - How many? _____

- f. Is any person in this petition in exclusion or deportation proceedings?

☐ No

☐ Yes - explain on separate paper

- g. Have you ever filed an immigrant petition for any person in this petition?

☐ No

☐ Yes - explain on separate paper

- h. If you indicated you were filing a new petition in Part 2, within the past 7 years has any person in this petition:

1) ever been given the classification you are now requesting? ☐ No

☐ Yes - explain on separate paper

2) ever been denied the classification you are now requesting? ☐ No

☐ Yes - explain on separate paper

- i. If you are filing for an entertainment group, has any person in this petition not been with the group for at least 1 year?

☐ No

☐ Yes - explain on separate paper

Part 5. Basic information about the proposed employment and employer.

Attach the supplement relating to the classification you are requesting.

Job Title		Nontechnical Description of Job	
Address where the person(s) will work if different from the address in Part 1.			
Is this a full-time position?		Wages per week or per year	
☐ No - Hours per week _____		☐ Yes	
Other Compensation (Explain)	Value per week or per year	Dates of Intended Employment From: _____ To: _____	
Type of Petitioner - check one:	☐ U.S. citizen or permanent resident	☐ Organization ☐ Other - explain on separate paper	
Type of business:	Year established:		
Current Number of Employees	Gross Annual Income	Net Annual Income	

Part 6. Signature. Read the information on penalties in the instructions before completing this section. If someone helped you prepare this petition he or she must complete Part 7.

I certify, under penalty of perjury under the laws of the United States of America, that this petition, and the evidence submitted with it, is all true and correct. If filing this on behalf of an organization, I certify that I am empowered to do so by that organization. If this petition is to extend a prior petition, I certify that the proposed employment is under the same terms and conditions as in the prior approved petition. I authorize the release of any information from my records, or from the petitioning organization's records, which the Immigration and Naturalization Service needs to determine eligibility for the benefit being sought.

Petitioner's signature and title	Print Name	Date	Day Time Telephone No. ()
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Please Note: If you do not completely fill out this form and the required supplement, or fail to submit required documents listed in the instructions, then the person(s) filed for may not be found eligible for the requested benefit, and this petition may be denied.

Part 7. Signature of person preparing form if other than above.

I declare that I prepared this petition at the request of the above person and it is based on all information of which I have any knowledge.

Signature	Print Name	Date	Day Time Telephone No. ()
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Firm Name and Address

DRAFT

U.S. Department of Justice
Immigration and Naturalization Service**DRAFT**OMB #1115-0168
H Classification
Supplement to Form I-129

Name of person or organization filing petition:

Name of person or total number of workers or trainees you are filing for:

List the alien's and any dependent family members; prior periods of stay in H classification in the U.S. for the last six years. Be sure to list only those periods in which the alien and/or family members were actually in the U.S. in an H classification. If more space is needed, attach an additional sheet.

Classification sought (check one):

- ☐ H-1A Registered professional nurse
☐ H-1B1 Specialty occupation
☐ H-1B2 Exceptional services relating to cooperative research
in a Department of Defense development project
☐ H-1B3 Fashion model of distinguished merit and ability

- ☐ H-2A Temporary agricultural worker
☐ H-2B Temporary nonagricultural worker
☐ H-3 Trainee
☐ H-3 Special education training

Section 1. Complete this section if filing for H-1A or H-1B classification.

Describe the proposed duties.

Alien's present occupation and summary of prior work experience.

If you are filing for H-1B1 classification, summarize the alien's formal education.

Section 2. Complete this section if filing for H-2A or H-2B classification.Employment is:
(check one)

- ☐ Seasonal
☐ Peakload
☐ Intermittent
☐ One-time occurrence

Temporary need is:
(check one)

- ☐ Unpredictable
☐ Periodic
☐ Recurrent annually

Explain your temporary need for the alien's services (attach a separate paper if additional space is needed).

DRAFT

Section 3. Complete this section if filing for H-2A classification.

The petitioner and each employer consent to allow government access to the site where the labor is being performed for the purpose of determining compliance with H-2A requirements. The petitioner further agrees to notify the Service in the manner and within the time frame specified if an H-2A worker absconds or if the authorized employment ends more than five days before the relating certification document expires, and pay liquidated damages of ten dollars for each instance where it cannot demonstrate compliance with this notification requirement. The petitioner also agrees to pay liquidated damages of two hundred dollars for each instance where it cannot be demonstrated that the H-2A worker either departed the United States or obtained authorized status during the period of admission or within five days of early termination, whichever comes first.

The petitioner must execute Part A. If the petitioner is the employer's agent, the employer must execute Part B. If there are joint employers, they must each execute Part C, or submit an equivalent statement.

Part A. Petitioner:

By filing this petition, I agree to the conditions of H-2A employment, and agree to the notice requirements and limited liabilities defined in 8 CFR 214.2 (h) (3) (vi).

Petitioner's signature

Date

Part B. Employer who is not petitioner:

I certify that I have authorized the party filing this petition to act as my agent in this regard. I assume full responsibility for all representations made by this agent on my behalf, and agree to the conditions of H-2A eligibility.

Employer's signature

Date

Part C. Joint Employers:

I agree to the conditions of H-2A eligibility.

Joint employer's signature(s)

Date

Joint employer's signature(s)

Date

Joint employer's signature(s)

Date

Joint employer's signature(s)

Date

Joint employer's signature(s)

Date

Section 4. Complete this section if filing for H-3 classification.

If you answer "yes" to any of the following questions, attach a full explanation.

- | | | |
|--|-----------------------------|------------------------------|
| a. Is the training you intend to provide, or similar training, available in the alien's country? | ☐ No | ☐ Yes |
| b. Will the training benefit the alien in pursuing a career abroad? | ☐ No | ☐ Yes |
| c. Does the training involve productive employment incidental to training? | ☐ No | ☐ Yes |
| d. Does the alien already have skills related to the training? | ☐ No | ☐ Yes |
| e. Is this training an effort to overcome a labor shortage? | ☐ No | ☐ Yes |
| f. Do you intend to employ the alien abroad at the end of this training? | ☐ No | ☐ Yes |

If you do not intend to employ this person abroad at the end of this training, explain why you wish to incur the cost of providing this training, and your expected return from this training.

DRAFT

U.S. Department of Justice
Immigration and Naturalization Service**DRAFT**OMB #1115-0168
E Classification
Supplement to Form I-129

Name of person or organization filing petition:

Name of person you are filing for:

Classification sought (check one):

☐ E-1 Treaty trader ☐ E-2 Treaty investor

Name of country signatory to treaty with U.S.

Section 1. Information about the Employer Outside the U.S. (If any)

Name

Address

Alien's Position - Title, duties and number of years employed

Principal Product, merchandise or service

Total Number of Employees

Section 2. Additional Information about the U.S. Employer.

The U.S. company is, to the company outside the U.S. (check one):

☐ Parent ☐ Branch ☐ Subsidiary ☐ Affiliate ☐ Joint Venture

Date and Place of Incorporation or Establishment in the U.S.

Nationality of Ownership (Individual or Corporate)

Name	Nationality	Immigration Status	% Ownership
------	-------------	--------------------	-------------

Assets

Net Worth

Total Annual Income

Staff in the U.S.

Executive/Manager

Specialized Qualifications or Knowledge

Total number of Nationals of Treaty Country in E or L Status

Total number of employees in the U.S.

Total number of employees the alien would supervise; or describe the nature of the specialized skills essential to the U.S. company.

Section 3. Complete if filing for an E-1 Treaty Trader

Total Annual Gross Trade/Business of the U.S. company

For Year Ending

\$

Percent of total gross trade which is between the U.S. and the country of which the treaty trader organization is a national.

Section 4. Complete if filing for an E-2 Treaty Investor

Total Investment:

Cash

Equipment

Other

\$

\$

\$

Inventory

Premises

Total

\$

\$

\$

U.S. Department of Justice
Immigration and Naturalization Service

DRAFT

OMB #1115-0168
L Classification
Supplement to Form I-129

Name of person or organization filing petition:

Name of person you are filing for:

This petition is (check one): ☐ for an individual under a previously approved blanket petition ☐ for approval of a new blanket petition
☐ to extend a blanket petition

Section 1. Complete this section if filing for an individual.

Classification sought (check one): ☐ L-1A manager or executive ☐ L-1B specialized knowledge

List the alien's, and any dependent family members', prior periods of stay in an L classification in the U.S. for the last seven years. Be sure to list only those periods in which the alien and/or family members were actually in the U.S. in an L classification.

Name and address of employer abroad.

Dates of alien's employment with this employer. Explain any interruptions in employment.

Description of the alien's duties for the year of qualifying experience, and any intervening activities.

Description of alien's proposed duties in the U.S.

Summarize the alien's formal education.

The U.S. company is, to the company abroad: (check one)

☐ Parent ☐ Branch ☐ Subsidiary ☐ Affiliate ☐ Joint Venture

Describe the stock ownership and managerial control of each company.

Is the alien coming to the U.S. to open a new office?

☐ Yes (explain in detail on separate paper) ☐ No

Section 2. Complete this section if filing for approval of a new Blanket Petition or to extend a Blanket Petition.

List all U.S. and foreign parent, branches, subsidiaries and affiliates included in this petition. (Attach a separate paper if additional space is needed.)

Name and country in which located

Relationship

DRAFTU.S. Department of Justice
Immigration and Naturalization ServiceOMB#1115-0168
O and P Classifications
Supplement to Form I-129

Name of person or organization filing petition:

Name of person or group or total number of workers you are filing for:

Classification sought (check one):

- ☐ O-1A Alien of extraordinary ability in sciences, education, business or athletics.
- ☐ O-1B Alien of extraordinary ability in the art or who has made extraordinary achievements in the motion picture or television industry.
- ☐ O-2 Essential Support Personnel for O-1.
- ☐ P-1A Alien who will perform with or be an integral part of the performance of an entertainment group which is recognized internationally as being outstanding and essential support personnel.

- ☐ P-1B Alien coming to perform at a specific athletic competition as an athlete, individually or as a group, at an internationally recognized level of performance and essential support personnel.
- ☐ P-2 Artist or entertainer for reciprocal exchange program and essential support personnel.
- ☐ P-3 Culturally unique program and essential support personnel.
- ☐ P-1S Essential Support Personnel for P-1.
- ☐ P-2S Essential Support Personnel for P-2.
- ☐ P-3S Essential Support Personnel for P-3.

Explain the nature of the event.

Describe the duties to be performed.

If you are filing for essential support personnel for an O-1, P-1, P-2 or P-3, list the principal O-1, P-1, P-2 or P-3 worker (s) below, and list any relating petition receipt numbers, if known.

If filing for O-2 or P support alien, dates of the alien's prior experience with the O-1 or P alien.

Have you attached the required written consultation(s)?

☐ Yes.☐ No.

If no, explain on separate paper.

DRAFTU.S. Department of Justice
Immigration and Naturalization ServiceOMB #1115-0168
Q & R Classifications
Supplement to Form I-129

Name of person or organization filing petition:

Name of person you are filing for:

Section 1. Complete this section if you are filing for a Q international cultural exchange alien.

I hereby certify that the each participant in this international cultural exchange program:

- is at least 18 years of age,
- has the ability to communicate effectively about the cultural attributes of his or her country of nationality to the American public, and
- has not previously been in the United States as a Q nonimmigrant unless he/she has resided and been physically present outside the U.S. for the immediate prior year.

I also certify that the same wages and working conditions are accorded the participants as are provided to similarly employed U.S. workers.

Petitioner's signature

Date

Section 2. Complete this section if you are filing for an R religious worker.

List the alien's, and any dependent family members, prior periods of stay in R classification in the U.S. for the last six years. Be sure to list only those periods in which the alien and/or family members were actually in the U.S. in an R classification.

Describe the alien's proposed duties in the U.S.

Describe the alien's qualifications for the vocation or occupation.

Description of the relationship between the U.S. religious organization and the organization abroad of which the alien was a member.

○ **DRAFT** ○

Supplement-1

Attach to Form I-129 when more than one person is included in the petition. (List each person separately. Do not include the person you named on the form).

Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Social Security No.		A#
IF IN THE U.S.	Date of Arrival (month/day/year)	I-94#	
	Current Nonimmigrant Status:	Expires on (month/day/year)	
Country where passport issued	Expiration Date (month/day/year)	Family member's relationship to the Worker	
If group, give date the worker started with the group:		Consulate or Inspection Facility where worker will apply for Visa or entry:	

Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Social Security No.		A#
IF IN THE U.S.	Date of Arrival (month/day/year)	I-94#	
	Current Nonimmigrant Status:	Expires on (month/day/year)	
Country where passport issued	Expiration Date (month/day/year)	Family member's relationship to the Worker	
If group, give date the worker started with the group:		Consulate or Inspection Facility where worker will apply for Visa or entry:	

Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Social Security No.		A#
IF IN THE U.S.	Date of Arrival (month/day/year)	I-94#	
	Current Nonimmigrant Status:	Expires on (month/day/year)	
Country where passport issued	Expiration Date (month/day/year)	Family member's relationship to the Worker	
If group, give date the worker started with the group:		Consulate or Inspection Facility where worker will apply for Visa or entry:	

Family Name	Given Name	Middle Initial	Date of Birth (month/day/year)
Country of Birth	Social Security No.		A#
IF IN THE U.S.	Date of Arrival (month/day/year)	I-94#	
	Current Nonimmigrant Status:	Expires on (month/day/year)	
Country where passport issued	Expiration Date (month/day/year)	Family member's relationship to the Worker	
If group, give date the worker started with the group:		Consulate or Inspection Facility where worker will apply for Visa or entry:	

Drug Enforcement Administration**Paul S. Bowes, O.D.; Revocation of Registration**

On August 31, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Paul S. Bowes, O.D., 2879 Poplar Avenue, Memphis, Tennessee 38111, proposing to revoke his DEA Certificate of Registration, BB1183273, and to deny any pending applications for registration as a practitioner under 21 U.S.C. 823(f). The proposed action was predicated on Dr. Bowes' lack of authorization to handle controlled substances in the State of Tennessee. 21 U.S.C. 823(f).

The Order to Show Cause was sent to Dr. Bowes by registered mail. More than thirty days have passed since the Order to Show Cause was received by Dr. Bowes and the Drug Enforcement Administration has received no response thereto. Pursuant to 21 CFR 1301.54(a) and 1301.54(d), Paul S. Bowes, O.D., is deemed to have waived his opportunity for a hearing. Accordingly, the Administrator now enters his final order in this matter without a hearing and based on the investigative file. 21 CFR 1301.57.

The Administrator finds that based upon an opinion issued by the Attorney General of the State of Tennessee, Dr. Bowes' license to practice optometry in the State of Tennessee no longer authorizes him to handle controlled substances. This opinion, issued on March 28, 1988, declared that the applicable State statute does not authorize licensed optometrists to prescribe, dispense, administer or otherwise handle controlled substances. Therefore, the Administrator concludes that the DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without State authority to handle controlled substances. See 21 U.S.C. 823(f). The Administrator and his predecessors have consistently so held. See Howard J. Reuben, M.D., 52 FR 8375 (1987); Ramon Pla, M.D., Docket No. 86-54, 51 FR 41168 (1986); Dale D. Shahan, D.D.S., Docket No. 85-57, 51 FR 23481 (1986); and cases cited therein.

No contrary interpretations of the applicable State statute have been offered by Dr. Bowes. Therefore, the Administrator concludes that Dr. Bowes' DEA Certificate of Registration must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration,

pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, BB1183273, previously issued to Paul S. Bowes, O.D., be, and it hereby is, revoked, and any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective January 29, 1993.

Dated: December 23, 1992.

Robert C. Bonner,

Administrator of Drug Enforcement.

[FR Doc. 92-31683 Filed 12-29-92; 8:45 am]

BILLING CODE 4410-00-M

Manufacturer of Controlled Substances Notice of Registration

By Notice dated November 12, 1992, and published in the *Federal Register* on November 19, 1992, (57 FR 54610), Roche Diagnostic Systems, Inc., 1080 U.S. Highway 202, Branchburg, New Jersey 08876, made application to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Phencyclidine (7471)	II
Methadone (9250)	II

No comments or objections have been received. Therefore, pursuant to section 303 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 and title 21, Code of Federal Regulations § 1301.54(e), the Deputy Assistant Administrator hereby orders that the application for registration submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: December 21, 1992.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 92-31559 Filed 12-29-92; 8:45 am]

BILLING CODE 4410-00-M

DEPARTMENT OF LABOR**Office of The Secretary****Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)**

Background: The Department of Labor, in carrying out its responsibilities

under the Paperwork Reduction Act (44 U.S.C. chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

- The Agency of the Department issuing this recordkeeping/reporting requirement
- The title of the recordkeeping/reporting requirement
- The OMB and/or Agency identification numbers, if applicable
- How often the recordkeeping/reporting requirement is needed
- Whether small businesses or organizations are affected
- An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent
- The number of forms in the request for approval, if applicable
- An abstract describing the need for and uses of the information collection

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills ((202) 219-5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue, NW., room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 ((202) 395-6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

New

Bureau of Labor Statistics

Report of Federal Employment and Wages (ES-202 Program)
BLS-3021
Quarterly
Federal agencies or employees
9,220 respondents; 22.2 minutes per response; 13,646 total hours; 1 form
The report of Federal Employment and Wages is used to collect information

on the employment and wages for Federal employers covered by Unemployment Compensation within their respective industries and/or geographical areas. These data are necessary to enhance the ES-202 Program data which are used for sampling, benchmarking, and economic analysis.

Revision

Bureau of Labor Statistics
Producer Price Indexes by Industry
1220-0008; BLS 473P, BLS 1810A, B, C, E, and F
Businesses or other for-profit; Federal agencies or employees;
Small businesses or organizations

Form No.	Respondents	Frequency	Estimated responses	Average time per response	Subtotal hours
BLS 1810, A, B, C, E, and F	5,008	One time only	5,008	2 hours	10,016
BLS 473P	21,480	Monthly (per price quote)	996,972	18 minutes	298,082
Total hours					309,108

The Producer Price Index, which is one of the nation's leading economic indicators is used as a measure of price movements, indicator of inflationary trends in the economy, inventory valuation measure for some organizations, and measure of purchasing power of the dollar at the primary market level. It is also used in market research and as a basis for escalation in long-term contracts.

Bureau of Labor Statistics
Response Analysis Survey of Payroll Processing and Payroll Software Companies
1220-0089; BLS-790-RAS
On occasion

Businesses or other for-profit; small businesses or organizations
250 respondents; 40 minutes per response; 167 total hours.

The Current Employment Statistics Survey and Employment and Wages Program are the primary sources of employment and wage information used to measure economic performance. The Response Analysis Survey continues the Bureau of Labor Statistics' efforts to review the sources of information

available to respondents, to better match available records to program definitions, and to improve the quality of the data.

Bureau of Labor Statistics
February, June, August, and November 1993 CPS Supplement on Unemployment Insurance Compensation
1220-0122; CPS-1

On occasion
Individuals or households
3,000 respondents; 1 minute per response; 50 total hours; 1 form.

This supplement will provide data on why a growing proportion of the unemployed are not receiving or have not been applying for benefits under the Unemployment Insurance (UI) Program. Information of this type will assist the Labor Department in managing the UI program and will be useful to Congress for legislative purposes.

Extension

Employment Standards Administration
Employer's Report of Injury or Occupational Illness; Physician's Report on Impairment of Vision; Employer's Supplementary Report of Accident or Occupational Illness

1215-0031; LS-202; LS-205; LS-210

On occasion

Individuals or households; Businesses or other profit; Small businesses or organizations.

Form No.	Annual responses	Hours time per responses	Subtotal
LS-202	41,000	.25	10,250
LS-205	110	.75	83
LS-210	4,300	.25	1,075
Total hours ..			11,408

Forms are used to report injuries, periods of disability, and medical treatment under the Longshore and Harbor Workers' Compensation Act. Employment Standards Administration Report of Ventilatory Study; Roentgenographic Interpretation; Medical History and Examination for Coal Mine Workers' Pneumoconiosis; Report of Arterial Blood Gas Study

1215-0090

On occasion

Businesses or other for profit; Non-profit institutions; Small businesses or organizations

Form No.:	Respondents	Minutes per response
CM-907	5,500	20
CM-933	11,000	5
CM-933B	500	5
CM-988	5,500	30
CM-1159	5,500	15
Total hours		6,917

20 CFR Part 718 specifies that certain information relative to the medical condition of a claimant who is alleging the presence of pneumoconiosis be obtained as a routine function of the claim adjudication process. The medical specifications in the regulations have

been formatted in a variety of forms to promote efficiency and accuracy in gathering the required data. These forms were designed to meet the need of establishing medical evidence. Employment and Training Administration

ETA Summaries UI Trust Fund Activities

1205-0154, ETA 2112, 8401, 8403, 8405, 8413, 8414

Form No.	Affected public	Respondents	Frequency	Average time per response
ETA 2112	State or local Govts	53	6 months	30 minutes.
ETA 8401	State or local Govts	53	6 months	30 minutes.
ETA 8405	State or local Govts	53	6 months	30 minutes.
ETA 8413	State or local Govts	53	6 months	30 minutes.
ETA 8414	State or local Govts	53	6 months	30 minutes.
ETA 8403	State or local Govts	18	6 months	30 minutes.
Total hours				849

ETA report 8403 monitors Reed Act funds. ETA Reports 2112, 8401, 8405, 8413 and 8414 are used to monitor Unemployment Trust Fund cash flow disbursement, measure cash management performance and regulate

balances pertaining to unemployment benefits paid from Federal sources. These activities are coordinated with State government accounting systems. Employment and Training Administration

Worker Adjustment Program Annual Program Report and Worker Adjustment Program Quarterly Financial Report
1205-0274; ETA 9019, 9020

Form No.	Affected public	Respondents	Frequency	Average time per response
ETA 9010	State or local Govts	704	Annual	81 hrs 21 min
ETA 9020	State or local Govts	52	Quarterly	8 hours
Total hours				65,980

The information will be used to assess Job Training Partnership Act statewide programs under Economic Dislocation and Worker Adjustment Assistance. Participant and financial data will be used to respond to Congressional oversight, to prepare budget requests, and make annual reports to Congress.

Signed at Washington, DC this 17th day of December, 1992.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 92-31682 Filed 12-29-92; 8:45 am]

BILLING CODE 4510-24-M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and

are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filled in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 11, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 11, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 14th day of December, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Petitioner (Union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
American Cyanamid Co (Co)	Bound Brook, NJ	12/14/92	11/30/92	28,093	Methotrexate.
Goldstar of America, Inc (Co)	Huntsville, AL	12/14/92	12/01/92	28,094	Color TV's.
Nerco Oil and Gas, Inc (Co)	Portland, OR	12/14/92	12/01/92	28,095	Natural gas liquids & natural gas.
Pratt & Whitney Aircraft (Workers)	North Berwick, ME	12/14/92	11/25/92	28,096	Jet engine parts.
McDonnell Douglas Aerospace Co (Workers)	Columbus, OH	12/14/92	12/04/92	28,097	Steel fabrications & airframe components.
Marilyn Fashions, Inc (Co)	Windber, PA	12/14/92	12/03/92	28,098	Ladies' dresses.
IBM Corp (Workers)	San Jose, CA	12/14/92	11/30/92	28,099	Computers.
Huls America (Workers)	Piscataway, NJ	12/14/92	11/21/92	28,100	Stearates and paint drier additives.
Harcros Pigments, Inc (Workers)	Emeryville, CA	12/14/92	12/01/92	28,101	Iron oxide pigments.
InterRoyal Corp., Storage products (UE)	Warren, PA	12/14/92	11/16/92	28,102	Steel Shelving.
Catalina (Workers)	Murray, UT	12/14/92	12/01/92	28,103	Ladies' swimwear & sportswear.
Fairfield Industries, Inc (Co)	Houston, TX	12/14/92	12/01/92	28,104	Oil exploration and drilling.
Fujitsu America, Inc (Workers)	Hillsboro, OR	12/14/92	11/21/92	28,105	Disk drives.
Dowty Aerospace Yakima (Co)	Yakima, WA	12/14/92	11/30/92	28,106	Hydraulic actuators.

Petitioner (Union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Big Yank Corp, Dixie Factory (Co)	Hattiesburg, MS	12/14/92	11/24/92	28,107	Jeanes.
Homoco International, Inc (Co)	Bellaire, TX	12/14/92	11/30/92	28,108	Oilfield services.

[FR Doc. 92-31576 Filed 12-29-92; 8:45 am]
BILLING CODE 4510-30-M

[TA-W-27,859]

**Armor Elevator Co., Louisville, KY;
Notice of Affirmative Determination
Regarding Application for
Reconsideration**

On December 21, 1992, Local 369 of the United Electrical Workers requested administrative reconsideration of the Department of Labor's denial notice for workers at the subject firm. The Department's Negative Determination was issued on December 7, 1992 and will soon be published in the *Federal Register*.

The union claims that the plant has closed and that the elevator controls are being imported from Europe.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 23rd day of December 1992.

Robert O. Deslongchamps,

*Director, Office of Legislation & Actuarial
Services, Unemployment Insurance Service.*

[FR Doc. 92-31687 Filed 12-29-92; 8:45 am]

BILLING CODE 4510-30-M

**Determinations Regarding Eligibility
To Apply for Worker Adjustment
Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of December 1992.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,852; Continental Plastic Container, Inc., Burlington, WI

TA-W-27,883; Libbey Owens Ford Co., Sherman, TX

TA-W-27,871; Alloytek, Inc., Grandville, MI

TA-W-27,895; Wayne H. Mullin Shoe Patterns, Avon, MA

TA-W-27,715; Lewis Bolt & Nut Co., Minneapolis, MN

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-27,880; Fleisher Finishing, Inc., Waterbury, CT

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,859; Armor Elevator Co., Louisville, KY

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,876; Sytech, Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,662; White GMC Trucks of Baltimore, Inc., Baltimore, MD

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,037; BethEnergy Mines, Inc., 84 Complex, Bethlehem, PA

U.S. imports of coal were negligible in the relevant period.

TA-W-27,870; Japex (U.S.) Corp., Houston, TX

The workers' firm does not produce an article as required for certification

under section 222 of the Trade Act of 1974.

TA-W-27,746; Hein Werner Corp.,

Automotive Div., Waukesha, WI

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,782; Auto-Comm Engineering Corp., Lafayette, LA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,879; ABB Vetco Gray, Inc., Sales Group, Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,838; Welltech, Inc., Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-27,744; Chevron USA Products Co., Port Arthur, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,899; Chevron Overseas Petroleum, Inc., San Ramon, CA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-27,929; GPM Gas Corp., Douglas Gas Gathering System & Gas Processing Plant, Douglas, WY

Increased imports did not contribute importantly to worker separations at the firm.

Affirmative Determinations

TA-W-27,887; TA-W-27,888; The William Carter Co., Raymondville, TX and Harlington, TX

A certification was issued covering all workers separated on or after September 18, 1991.

TA-W-27,584; R & C Drilling Co., Woodward, OK

A certification was issued covering all workers separated on or after August 3, 1991.

TA-W-27,860; Sunstrand Aerospace, Brea, CA

A certification was issued covering all workers separated on or after September 15, 1991.

TA-W-27,885; Clear Lumber

Manufacturing, Sweet Home, OR
A certification was issued covering all workers separated on or after September 21, 1991.

TA-W-27,877; General Electric Co., Aerospace Electronic Systems, Utica, NY

A certification was issued covering all workers separated on or after October 26, 1992.

TA-W-27,953; Hamilton Beach Proctor-Silex, Inc., Clinton, NC

A certification was issued covering all workers separated on or after October 16, 1991.

TA-W-27,943; Lola Dress, Inc., Wilkes Barre, PA

A certification was issued covering all workers separated on or after October 12, 1991.

TA-W-27,889; Valley Dress

Manufacturing Co., Pittston, PA
A certification was issued covering all workers separated on or after September 22, 1991.

TA-W-27,882; American Optical Corp., Southbridge, MA

A certification was issued covering all workers engaged in the production of CR-39 plastic lenses separated on or after September 21, 1991.

TA-W-27,941; Bobe-Jo, Inc., Fall River, MA

A certification was issued covering all workers separated on or after October 15, 1991.

TA-W-27,940; Leather Shop

Accessories, Inc., Cerritos, CA
A certification was issued covering all workers separated on or after October 20, 1991.

TA-W-27,854; Cedarville Shake Co., Inc., Oakville, WA

A certification was issued covering all workers separated on or after September 3, 1991.

TA-W-27,707; Geoquest Technology Corp., Houston, TX

A certification was issued covering all workers separated on or after July 29, 1991.

TA-W-27,965; Obion-Denton Co., Trumann, AR

A certification was issued covering all workers separated on or after October 15, 1991.

TA-W-27,974; Eastern Sportswear Manufacturing Co., Inc., New Bedford, MA

A certification was issued covering all workers separated on or after October 26, 1991.

TA-W-27,942; Lee Manufacturing, Pittston, PA

A certification was issued covering all workers separated on or after October 12, 1991.

TA-W-27,904; Howard Industries, Dunlap, TN

A certification was issued covering all workers separated on or after September 29, 1991.

TA-W-27,917; U.S. Shoe Corp., Ripley, OH

A certification was issued covering all workers separated on or after October 16, 1991.

TA-W-27,905; Everex—Utah, St. George, UT

A certification was issued covering all workers separated on or after October 8, 1991.

TA-W-27,964; Pioneer Balloon Co., Willard, OH

A certification was issued covering all workers separated on or after October 24, 1991.

TA-W-27,989; Henson Kickernick, McAlester, OK

A certification was issued covering all workers separated on or after October 28, 1991.

TA-W-27,910; American Olean Tile Co., Quakertown, PA

A certification was issued covering all workers separated on or after October 5, 1991.

TA-W-27,798; Enteria Corp., Houston, TX

A certification was issued covering all workers separated on or after August 13, 1991.

TA-W-27,799, TA-W-27,800; Oilfield Rental & Fishing, Houston TX and Odessa, TX

A certification was issued covering all workers separated on or after August 13, 1991.

I hereby certify that the aforementioned determinations were issued during the month of December 1992. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: December 21, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-31574 Filed 12-29-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,810]**Hercules Inc., Radford, VA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the

Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 30, 1992, applicable to all workers engaged in the production of benite 10" and 4.325" for 120 mm primers at Hercules, Inc., in Radford, Virginia. The notice was published in the Federal Register on December 15, 1992 (57 FR 59359).

On the basis of information received after the initial certification, the Department is amending the certification to include all workers at the subject firm.

The findings show that the Radford Army Arsenal is a U.S. Government owned and contractor operated plant. Hercules, as the contractor, does business with the U.S. Government and is permitted to utilize the facilities and equipment at Radford to contract with other customers (third party contracts). The findings show that third party contracts accounted for a substantial amount of military propellant business at the Radford arsenal.

Late findings from the Department's bid survey show that Radford was the lowest domestic bidder on a substantial number of lost bids which were awarded to third party customers who used Canadian suppliers of military propellants at Radford's expense.

Other findings show decreased sales and production of military propellants at Radford in 1991 compared to 1990 and in the first quarter of 1992 compared to the same period in 1991.

Other findings show that substantial worker separations occurred in 1991 and in 1992.

The amended notice applicable to TA-W-27,810 is hereby issued as follows:

"All workers of Hercules Incorporated, Radford, Virginia who became totally or partially separated from employment on or after August 27, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 18th day of December 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-31573 Filed 12-29-92; 8:45 am]

BILLING CODE 4510-30-M

Job Training Partnership Act: Native American Programs' Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, and section 401(h)(1) of the Job Training Partnership Act, as amended (29 U.S.C. 1671(h)(1)),

notice is hereby given of a meeting of the Job Training Partnership Act Native American Programs' Advisory Committee.

Time and Date: The meeting will begin at 9 a.m. on January 14, 1993 and continue until close of business that day; and will reconvene at 9 a.m. on January 15, 1993, and adjourn at close of business that day. The final two hours of the meeting on January 14 will be reserved for presentations by members of the public.

Place: Rooms S-4215 A, B, and C, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Status: The meeting will be open to the public.

Matters To Be Considered: The agenda will focus on proposed revised regulations for the section 401 program.

Due to scheduling difficulties, we are unable to provide the full 15 days of advance notice of this meeting.

Contact Person for More Information: Paul A. Mayrand, Director, Office of Special Targeted Programs, Employment and Training Administration, United States Department of Labor, room N-4641, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202-219-5500 (this is not a toll-free number).

Signed at Washington, DC this 23rd day of December, 1992.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 92-31612 Filed 12-29-92; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27, 450A]

Tektronic, Inc. Test & Measurement Group, Beaverton, OR; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Tektronic, Incorporated, Test & Measurement Group, Beaverton, Oregon. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-27, 450A; Tektronic, Inc., Test & Measurement Group Beaverton, Oregon (December 18, 1992)

Signed at Washington, DC, this 21st day of December, 1992.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 92-31577 Filed 12-29-92; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Petitions for Modification; Corrections

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Correction.

SUMMARY: This notice corrects summaries of petitions for modification of application of mandatory safety standards published in the *Federal Register* on Tuesday, December 15, 1992 (57 FR 59360 and 59361). In notice document 92-30393 beginning on page 59360, make the following corrections.

On page 59360 item number 2, docket number M-92-159-C and on page 59361 item number 14, docket number M-92-171-C, change 30 CFR 75.313 to 30 CFR 75.342 (methane monitors); on page 59360 item number 5, docket number M-92-162-C and on page 59361 item number 13, docket number M-92-170-C, change 30 CFR 75.305 to 30 CFR 75.364 (weekly examination). These changes were effective on November 16, 1992.

Dated: December 21, 1992.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 92-31575 Filed 12-29-92; 8:45 am]

BILLING CODE 4510-43-M

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. J & T Mining, Inc.

[Docket No. M-92-172-C]

J & T Mining, Inc., P.O. Box 938, Middlesboro, Kentucky 40965 has filed a petition to modify the application of 30 CFR 75.342 (methane monitors) to its No. 2 Mine (I.D. No. 15-17243) located in Bell County, Kentucky. The petitioner proposes to use a hand-held, machine-mounted, continuous-duty methane and oxygen monitor on permissible three-wheel tractors with drag bottom buckets.

2. Southern Ohio Coal Co.

[Docket No. M-92-173-C]

Southern Ohio Coal Company, P.O. Box 490, Athens, Ohio 45701 has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its Meigs No. 2 Mine (I.D. No. 33-01173) located in Vinton County, Ohio; and its Meigs No. 31 Mine (I.D. No. 33-01172) located in Meigs County, Ohio. The petitioner proposes to plug and mine through oil and gas wells. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Peabody Coal Co.

[Docket No. M-92-174-C]

Peabody Coal Company, P.O. Box 1990, Henderson, Kentucky 42420 has filed a petition to modify the application of 30 CFR 75.360(b)(6) (pre-shift examinations) to its Baldwin Mine (I.D. No. 11-01008), and its Marissa Mine (I.D. No. 11-02440) both located in Randolph County, Illinois; its Eagle No. 2 Mine (I.D. No. 11-00598) located in Gallatin County, Illinois; and its Mine No. 10 (I.D. No. 11-00585) located in Christian County, Illinois. The petitioner proposes to examine one entry of the intake air course in its entirety at least once per day, and to take methane readings during the pre-shift examination at each main split of air into each working section and the last permanent stopping on the intake stopping line in each working section. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard. In addition, petitioner states that application of the existing standard would result in a diminution of safety to the miners.

4. Peabody Coal Co.

[Docket No. M-92-175-C]

Peabody Coal Company, P.O. Box 1990, Henderson, Kentucky 42420 has filed a petition to modify the application of 30 CFR 75.360(b)(6) (pre-shift examinations) to its Camp No. 1 Mine (I.D. No. 15-02709) located in Union County, Kentucky; and its Martwick Mine (I.D. No. 15-14074) located in Muhlenberg County, Kentucky. The petitioner proposes to examine portions of the intake air courses daily until traveled in its entirety once a week, and to take a methane test during the pre-shift examination at an evaluation point or points in the main split of air in by the point where the air has passed previously developed places. The

petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard. In addition, petitioner states that application of the existing standard would result in a diminution of safety to the miners.

5. Mid-Continent Resources, Inc.

[Docket No. M-92-176-C]

Mid-Continent Resources, Inc., P.O. Box 158, Corbondale, Colorado 81623 has filed a petition to modify the application of 30 CFR 75.1711 (sealing of mines) to its Dutch Creek Mine (I.D. No. 05-00301), its L.S. Wood Mine (I.D. No. 05-00300), its Bear Creek Mine (I.D. No. 05-00351), and its Coal Basin Mine (I.D. No. 05-02342) all located in Pitkin County, Colorado. Due to the elevation of several portals of the mine and the winter weather conditions, the petitioner requests that the time for sealing be extended to a date in the summer of 1993, 90 days after all portals and equipment are fully accessible by personnel. The petitioner states that requiring personnel to work on sealing mine portals during winter months would result in dangerous travel conditions on icy and/or snowpacked roads. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

6. Consolidation Coal Co.

[Docket No. M-92-177-C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.364 (weekly examination) to its Shoemaker Mine (I.D. No. 46-01436) located in Marshall County, West Virginia. Due to deteriorating roof conditions, certain areas of the mine cannot be safely traveled. The petitioner proposes to establish check points to monitor the quantity and quality of air entering and leaving the affected area. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

7. Consolidation Coal Co.

[Docket No. M-92-178-C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1101-8 (water sprinkler system; arrangement of sprinklers) to its Jones Fork 13 F & G-H4 Mine (I.D. No. 15-17065), its Jones Fork 13 D & E-H4 Mine

(I.D. No. 15-17098), and its Jones Fork E1-B5 Mine (I.D. No. 15-17213) all located in Knott County, Kentucky. The petitioner proposes to use a single overhead pipe system with 1/2-inch automatic sprinklers located on 10-foot centers to cover 50 feet of fire resistant belt or 150 feet of non-fire resistant belt. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

8. Little Rock Coal Co.

[Docket No. M-92-179-C]

Little Rock Coal Company, RD #4, Box 395, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its No. 2 Slope (I.D. No. 36-08299) located in Schuylkill, Pennsylvania. The petitioner proposes to use a slope conveyance (gunboat) without safety catches to transport persons. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

9. J. & T Mining, Inc.

[Docket No. M-92-180-C]

J. & T Mining, Inc., P.O. Box 938, Middlesboro, Kentucky 40965 has filed a petition to modify the application of 30 CFR 75.342 (methane monitors) to its No. 1 Mine (I.D. No. 15-17244) located in Bell County, Kentucky. The petitioner proposes to use a hand-held, machine-mounted, continuous-duty methane and oxygen monitor on permissible three-wheel tractors with drage bottom buckets. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

10. Westmoreland Coal Co.

[Docket No. M-92-191-C]

Westmoreland Coal Company, P.O. Box Drawer A & B, Big Stone Gap, Virginia 24219 has filed a petition to modify the application of 30 CFR 75.501-2(a)(2) to its Wentz No. 1 Mine (I.D. No. 44-00302), its Bullitt Mine (I.D. No. 44-00304), its Pierrepont Mine (I.D. No. 44-06206), its Prescott No. 2, Beechwood Portal (I.D. No. 44-01689), its West Fork Mine, No. 2 Portal (I.D. No. 44-04148), and its Holton Low Splint (I.D. No. 44-04162) all located in Wise County, Virginia; and its Holton Mine (I.D. No. 44-04197) located in Lee County, Virginia. The petitioner proposes to use nonpermissible, battery-powered, hand-held electric drills in or in by the last open crosscut and in the

return. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

11. Gold Fields Operating Co.

[Docket No. M-92-21-M]

Gold Fields Operating Company, P.O. Box 69, Golconda, Nevada 89414 has filed a petition to modify the application of 30 CFR 56.6309 (fuel oil requirements for ANFO) to its Chimney Creek Mine (I.D. No. 26-01942) located in Humboldt County, Nevada. The petitioner proposes to use "used oil" to prepare ammonium of fuel nitrate (ANFO).

12. General Chemical Partners

[Docket No. M-92-22-M]

General Chemical Partners, P.O. Box 551, Green River, Wyoming 82935 has filed a petition to modify the application of 30 CFR 57.14101 (brakes) to its General Chemical Mine (I.D. No. 48-00155) located in Sweetwater County, Wyoming. The petitioner proposes to use lock brakes in conjunction with chock blocks instead of parking brakes on parked mobile equipment. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 29, 1993. Copies of these petitions are available for inspection at that address.

Dated: December 22, 1992.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 92-31578 Filed 12-29-92; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (92-78)]

NASA Advisory Council (NAC), Space Station Advisory Committee (SSAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Station Advisory Committee.

DATES: January 13, 1993, 8:30 a.m. to 5:30 p.m. and January 14, 1993, 8:30 a.m. to noon.

ADDRESSES: Space Center Houston, 1601 NASA Road # 1, Executive Office Suite, Houston, Texas 77258-0653.

FOR FURTHER INFORMATION CONTACT: Dr. W.P. Raney, Code D, National Aeronautics and Space Administration, Washington, DC 20546, 202/453-4165.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

- Office of Space Systems Overview
- Space Station Freedom Program Update
- Procurement
- Operations Report
- Space Station Advisory Committee Panel Reports

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the participants. Visitors will be requested to sign a visitor's register.

Dated: December 23, 1992.

John W. Gaff,

Advisory Committee Management Officer.

[FR Doc. 92-31613 Filed 12-29-92; 8:45 am]

BILLING CODE 7510-01-M

OFFICE OF NATIONAL DRUG CONTROL POLICY

President's Commission on Model State Drug Laws; Meeting

AGENCY: President's Commission on Model State Drug Laws; Office of National Drug Control Policy.

ACTION: Notice of open meeting.

SUMMARY: Notice is hereby given of a meeting of the President's Commission on Model State Drug Laws.

TIME AND DATE: January 6, 1993, from 8:30 a.m. to 5 p.m.

PLACE: The meeting will be held in the Grace Court Room on the Campus of the University of San Diego.

FOR FURTHER INFORMATION CONTACT: Ms. Jean Balestrieri, Confidential Assistant, President's Commission on Model State Drug Laws, Office of National Drug Control Policy, Executive Office of the President, Washington, DC 20500, (202) 467-9640.

SUPPLEMENTARY INFORMATION: The President's Commission on Model State Drug Laws was established by the Anti-Drug Abuse Act of 1988, Public Law 100-690, section 7604, with the purpose of preparing a proposed uniform code of State drug laws.

At the session on January 6, the Commission will discuss economic remedies for drug offenses, including asset forfeiture and money laundering statutes.

Less than 15 days notice of this public meeting is being given because of an administrative error regarding the date of the meeting.

Terence J. Pell,

Chief of Staff, Office of National Drug Control Policy.

[FR Doc. 92-31657 Filed 12-29-92; 8:45 am]

BILLING CODE 3180-02-M

NATIONAL SCIENCE FOUNDATION

Permit Issued Under the Antarctic Conservation Act of 1978

December 24, 1992.

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Public Law 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT:

Thomas F. Forhan, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On November 25, 1992 the National Science Foundation published a notice in the Federal Register of permit applications received. Permits were issued to William R. Fraser on December 24, 1992.

Thomas F. Forhan,

Permit Office, Division of Polar Programs.

[FR Doc. 92-31730 Filed 12-29-92; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70-36]

Finding of No Significant Impact and Notice of Opportunity for a Hearing Amendment of Special Nuclear Material License No. SNM-33, Combustion Engineering, Inc., Hematite, MO

The U.S. Nuclear Regulatory Commission is considering the amendment of Special Nuclear Materials License No. SNM-33 for the consolidation of all nuclear fuel manufacturing operations at the Hematite, Missouri facility.

Summary of the Environmental Assessment

Identification of the Proposed Action

The proposed action is to consolidate all nuclear fuel manufacturing activities at the Hematite nuclear fuel manufacturing facility in Hematite, Missouri. This action will relocate all nuclear fuel rod and assembly loading activities currently being performed at CE's Windsor, Connecticut, facility to Hematite. Modifications that will be made to the Hematite site as part of this program include increasing the fenced work area by approximately 2 acres, constructing a new rod and bundle assembly manufacturing building, modifying a portion of the existing warehouse area to include new pellet drying facilities, and expanding the automobile parking area. Additional changes to be made to the site are relocating and replacing the main storm drain lines, relocating the outfall at the site pond, and adding ground surface drains.

The licensee is authorized to receive, use, possess, store, and transfer up to 8,000 kilograms of uranium enriched to a maximum of 5.0 weight percent in the U-235 isotope in accordance with 10 CFR part 70 and up to 50,000 kilograms of source material in accordance with 10 CFR part 40. The possession limits for low-enriched uranium and source materials will not change with consolidation.

The Need for the Proposed Action

The proposed action is based on CE's expressed need to improve commercial competitiveness in the marketplace. Consolidation of the fuel fabrication activities at the Hematite facility will eliminate the need to transport radioactive materials between Connecticut and Missouri. Consolidating activities at Hematite will eliminate the need for the Windsor

license. The licensee will, therefore, no longer be required to pay the annual fees and associated costs for two special nuclear material licenses.

Environmental Impacts of the Proposed Action

Preliminary construction associated with consolidation consisted of replacing the existing main storm drain with a larger main, relocating the main approximately 20 feet north of the existing line, and increasing the size of the parking area. The storm drain outfall into the site pond was also relocated during preliminary construction. The larger replacement main will accommodate the increased runoff from the roof of the new rod and assembly building and the parking area.

The new rod and assembly building (Building 230) was constructed on a grassy area immediately west of the fenced manufacturing area. Building 230 is 190 feet (58 meters) by 200 feet (61 meters) and contains approximately 38,000 feet² (3,530 meters²) of new manufacturing space. The building is constructed of a free-standing steel frame with poured shallow concrete spread footings. The concrete-slab floor is poured on grade. The building was designed to meet the 1990 Building Officials and Code Administrators code and should withstand a seismic zone 2 earthquake, a wind loading of 100 miles per hour (161 kilometers per hour), and a snow loading of 50 pounds per foot² (244 kilograms per meter²). The fence surrounding the manufacturing area will be enlarged by an additional 2.4 acres (9,712 meters²) to include Building 230.

The new rod and assembly building was built on grade so only a minimal amount of excavation was required for construction. There were no forested or wetland areas impacted because of the construction. The impact to the area due to the site modifications has not been significant.

There are no planned releases of radioactive liquid wastes from routine production processes. Uranium contained in the radioactive liquid wastes from mop and cleanup water, the wet recovery process, grinder coolants, and scrubber solution is processed to recover the uranium. The amount of radioactive liquid waste to be processed for uranium recovery will increase as a result of consolidation. It is estimated that approximately 250 gallons of waste water will be generated per day in Building 230. Waste water potentially contaminated with uranium will be transferred to the pellet production building where it will be processed along with the other radioactive liquid

wastes generated from production processes.

The volume of laundry waste water will slightly increase as a result of the increase in the number of personnel who will be wearing protective clothing and working in the controlled area. The site laundry discharges to the sanitary waste water system which discharges to the site creek. Prior to discharge, the liquid wastes will be sampled and analyzed for gross alpha and beta activities. The control limits currently in place for the discharge of liquid effluents to the site creek will not be changed. There will be no significant impact to the environment due to liquid discharges.

Contaminated solid waste generated at the site is expected to increase because of consolidation. Part of the increase in solid waste will be due to the additional liquid effluents. Solidification of the liquid waste is a major source of contaminated solid waste. The liquid waste is heated and concentrated, and the resulting concentrate is solidified, put into drums, and shipped to a commercial licensed disposal facility.

An additional amount of solid waste will be created from fuel rod and assembly production activities in Building 230. The types of contaminated solids that may be generated are combustible materials used for cleaning, protective clothing, shoes, gloves, contaminated tools, equipment, fixtures, contaminated Zircaloy tubing, end caps, springs, and other scrap production parts. After the potentially contaminated waste is analyzed to determine the U-235 content, the combustible wastes are incinerated onsite. Non-combustible wastes are packaged in 55-gallon drums or metal boxes for shipment to a licensed low-level burial site.

While there will be an increase in the amount of solid waste generated, the amount is expected to be low. To reduce the amount of waste produced, strict control will be maintained on material brought into the controlled area. Combustible wastes will be incinerated to reduce the amount of solid waste to be shipped to a licensed burial site. The increase in the solid waste produced by consolidation will not have a significant impact on the area.

Prior to release to the environment, airborne effluents from process areas and process equipment are air filtered. While the processes are in operation, particulate filters continuously collect stack samples. The filters are changed weekly and are analyzed for gross alpha levels after suitable delay for the decay of the naturally occurring radon

daughter products. The licensee's existing control limits will not change for gross alpha activity in the exhaust air effluents of 4×10^{-12} $\mu\text{Ci/cc}$, when averaged over a 2-week period, and 150 μCi per calendar quarter.

Prior to consolidation there were 17 exhaust stacks, and after consolidation, there will be 16 stacks. Six of the existing stacks will be eliminated and replaced with three new stacks. New stacks will be added in the new pellet drying area and in Building 230. All new stacks will be HEPA-filtered to remove the particulate material in the air stream prior to discharge to the atmosphere.

The ventilation system for the fuel process areas in Building 230 is designed to move air from uncontaminated to contaminated areas. The specific operations in Building 230 that will be ventilated using a centralized HEPA-filtered ventilation system are the pellet alignment tables, the pellet/tube loading blocks, the short stack hood, and the scrap packaging hood. Other operations in the building may also be ventilated through HEPA filters. The air passing through this system will move through two tandem banks of absolute HEPA filters, which should remove essentially all of the particulate matter. The exhaust air will be continuously sampled and analyzed for uranium content. The air exiting the filter banks can either be recycled back into the workplace or exhausted to the outside atmosphere.

A dose assessment was performed to evaluate if the proposed action would significantly increase the dose to the nearest residence from activities conducted at the site. The nearest private residence is located 290 meters east-southeast of the plant site. The calculated effective dose equivalent to the nearest adult resident is 0.024 mrem. For uranium exposure, the critical organ is the bone surface. The calculated dose to the bone surface is 0.36 mrem.

The calculated doses are well below the annual whole body dose limits set in 40 CFR 190.10 of 25 mrem and 10 CFR 20.105 of 500 mrem. The addition of the fuel rod and assembly work to the current fuel manufacturing operations will not significantly increase the doses to the nearest resident.

Conclusion

The staff concludes that consolidating all nuclear fuel manufacturing activities at the Hematite facility will not significantly impact the environment surrounding the site. The impact to the area from site modifications has not been significant. While the amount of

liquid effluents generated will increase, the existing control limits in place for liquid discharges will not change, and the impact to the environment due to liquid discharges will not be significant. The actual volume of uranium in the air effluents discharged to the atmosphere may decrease because of the additional filters placed on the new stacks. The calculated dose to the nearest resident is well below established federal regulations. If the proposed action is approved, the licensee will be able to terminate the Windsor special nuclear material license and decommission those buildings that had been used for fuel fabrication, resulting in a net positive impact to the environment.

Alternatives to the Proposed Action

The alternative to the proposed action is to deny the license amendment. Denial of the proposed action would mean the licensee would have to continue manufacturing the nuclear fuel rods and assemblies at the Windsor facility, if they were to remain in business. This alternative would only be considered if there were public health and safety issues that could not be resolved to the satisfaction of the NRC.

Agencies and Persons Consulted

In completing this assessment, the staff utilized the application dated August 5, 1992, and supplemental environmental information dated June 19, 1992, and November 12, 1992. Also, on September 3, 1992, the staff visited the site and discussed the amendment application with CE personnel.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment related to the amendment of Special Nuclear Material License No. SNM-33. On the basis of the assessment, the Commission has concluded that environmental impacts that would be created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the above documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW., Washington, DC.

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this renewal may file a request for a hearing. Any request for hearing must be filed with

the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); on the licensee (Combustion Engineering, Inc., P.O. Box 107, Hematite, Missouri 63047), and must comply with the requirements for requesting a hearing set forth in the Commission's regulation, 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings."

These requirements, which the requestor must address in detail, are:

1. The interest of the requestor in the proceeding;
2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing;
3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and
4. The circumstances establishing that the request for hearing is timely, that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (i.e., health, safety) interest in the proceeding; and the possible effect of any order may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, this 21st day of December 1992.

For the Nuclear Regulatory Commission.

John Hickey,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety, NMSS.

[FR Doc. 92-31706 Filed 12-29-92; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Meeting

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on January 7-9, 1993, in room P-110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on November 25, 1992.

Meeting Agenda

Thursday, January 7, 1993

8:30 a.m.-8:45 a.m.: Opening Remarks by ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. The Committee will discuss priorities for preparation of reports during this session.

8:45 a.m.-10:15 a.m.: Replacement of Analog Instrumentation With Digital Instrumentation (Open)—The Committee will hear a briefing and hold discussions with representatives of the NRC staff regarding the status of the staff's work on the replacement of analog instrumentation with digital instrumentation in operating plants. Representatives of the nuclear industry will participate, as appropriate.

10:30 a.m.-11:30 a.m.: Key Policy Issues for Advanced Reactor Designs (Open)—The Committee will discuss advanced reactor key policy issues raised by the NRC staff applicable to the MHTGR, PIUS, PRISM, and CANDU 3 reactor designs. Representatives of the NRC staff and of the nuclear industry will participate, as appropriate.

11:30 a.m.-12 noon: Annual Report to the U.S. Congress on the NRC Safety Research Program and Budget (Open/Closed)—The Committee will discuss its annual report to Congress on the NRC safety research program. The impact of budget on continuing and proposed research contracts will be discussed as required. Representatives of the NRC staff will participate, as appropriate.

Portions of this session will be closed as necessary to discuss information the premature disclosure of which would be likely to significantly frustrate proposed agency action.

1 p.m.-2 p.m.: Reactor Operating Experience (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff regarding an incident at the Barseback Nuclear Plant in Sweden which involved the dislodging of thermal insulation inside containment and resulted in partial clogging of two of five ECCS strainers. Representatives of the nuclear industry will participate, as appropriate.

2 p.m.-4 p.m.: Generic Issue 120, Online Testability of Protection Systems (Open)—The Committee will complete its review and comment on the NRC staff's proposed resolution of this generic issue. Representatives of the nuclear industry will participate, as appropriate.

4-4:45 p.m.: NRC Procedures for Incident Investigation (Open)—The Committee will discuss an NRC staff

proposal for changing the existing procedures for the NRC investigation of incidents at licensed facilities. Representatives of the NRC staff will participate as appropriate.

4:45 p.m.-6 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed reports regarding items considered during this meeting.

Friday, January 8, 1993.

8:30 a.m.-9:30 a.m.: Performance Indicator Report (Open)—The Committee will hear a briefing and hold discussions with representatives of the NRC staff regarding proposed revisions to the NRC performance indicator report. Representatives of the nuclear industry will participate, as appropriate.

9:30 a.m.-10 a.m.: Activities of ACRS Subcommittees and Members (Open)—The Committee will hear reports and hold discussions of ACRS subcommittee activity on assigned topics, including the conduct of Committee activities by the Planning and Procedures Subcommittee and the NRC Senior Management Meeting on the Organizational Factors Research Program.

10:15 a.m.-11:45 a.m.: Atomic Safety and Licensing Board Panel Activities (Open)—The Committee and representatives of the Atomic Safety and Licensing Board Panel (ASLBP) will discuss matters of mutual interest including the current and anticipated activities of the ASLBP.

12:45 p.m.-1:45 p.m.: Activities of ACRS Working Groups (Open)—The Committee will discuss the activities of the ACRS member/staff working group on the planning for the ACRS conference rooms in the White Flint 2 facility.

1:45 a.m.-3 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed reports regarding items considered during this meeting.

3:15 p.m.-4 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses received from the NRC on recommendations made in ACRS reports. Representatives of the NRC staff will participate, as appropriate.

4 p.m.-4:45 p.m.: Future ACRS Activities (Open)—The Committee will discuss the report of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee.

Saturday, January 9, 1993

8:30 a.m.-1:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed Committee

reports regarding items considered during this meeting.

1:30 p.m.-2:30 p.m.: Miscellaneous (Open)—The Committee will discuss matters considered but not completed at previous meetings as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the *Federal Register* on October 16, 1992 (57 FR 47494). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those open portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director, Mr. Raymond F. Fraley, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman.

Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the ACRS Executive Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92-463 that it is necessary to close portions of this meeting noted above to discuss information the premature disclosure of which would be likely to significantly frustrate proposed agency action per 5 U.S.C. 552b(c)(9)(B).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301-492-8049), between 8 a.m. and 4:30 p.m. e.s.t.

Dated: December 23, 1992.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 92-31707 Filed 12-29-92; 8:45 am]

BILLING CODE 7590-01-M

Northeast Nuclear Energy Co.; Issuance of Amendment to Facility Operating License

[Docket No. 50-423]

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 74 to Facility Operating License No. NPF-49 issued to Northeast Nuclear Energy Company, which revised the Technical Specifications for operation of the Millstone Nuclear Power Station, Unit No. 3, located in New London County, Connecticut. The amendment is effective as of the date of issuance.

The amendment revises the Technical Specifications to increase the surveillance test interval for the 4 kV bus undervoltage scheme so that associated logic and alarm relays are actuated once per 18 months rather than monthly.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the *Federal Register* on November 9, 1992 (57 FR 53360). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment (57 FR 61103).

For further details with respect to the action see: (1) The application for amendment date October 30, 1992, (2) Amendment No. 74 to License No. NPF-49, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the local public document room located at the Learning Resources Center, Thames Valley Technical College, 574 New London Turnpike, Norwich, Connecticut 06360. A copy of items (2), (3) and (4) may be obtained

upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland this 23rd day of December 1992.

For the Nuclear Regulatory Commission.

David H. Jaffe,

Acting Senior Project Manager, Project Directorate I-4, Division of Reactor Projects—II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-31708 Filed 12-29-92; 8:45 am]

BILLING CODE 7590-01-M

Northeast Nuclear Energy Co.; Issuance of Amendment to Facility Operating License

[Docket No. 50-423]

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 73 to Facility Operating License No. NPF-49 issued to Northeast Nuclear Energy Company (the licensee), which revised the Technical Specifications for operation of the Millstone Nuclear Power Station, Unit No. 3 located in New London County, Connecticut.

The amendment revises the Technical Specifications to extend, on a one-time basis, the latest date for required surveillance testing of emergency diesel generators for December 25, 1992, to the 1993 refueling outage, but no later than September 30, 1993.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth to the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the *Federal Register* on November 9, 1992 (57 FR 53361). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment (57 FR 61100).

For further details with respect to the action see: (1) The application for

amendment dated October 22, 1992, (2) Amendment No. 73 to License No. NPF-49, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the local public document room located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland this 23rd day of December 1992.

For the Nuclear Regulatory Commission

David H. Jaffe,

Acting Sr. Project Manager, Project Directorate I-4, Division of Reactor Projects—II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-31709 Filed 12-29-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-336]

Northeast Nuclear Energy Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 168 to Facility Operating License No. DPR-65 issued to Northeast Nuclear Energy Company (the licensee), which revised the Technical Specifications for operation of the Millstone Nuclear Power Station, Unit No. 2 located in New London County, Connecticut. The amendment is effective as of the date of issuance.

The amendment incorporates into the Technical Specifications changes in the area of Table 3.3-3, Engineered Safety Feature Actuation System Instrumentation (Page 3/4 3-13), the Table Notation, page 3/4 3-16, and the Action Statements, Action 4, page 3/4 3-17.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the *Federal Register*

on November 12, 1992 (57 FR 53795). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment (57 FR 61102).

For further details with respect to the action see: (1) The application for amendment dated October 28, 1992, as supplemented November 25, 1992 and December 8, 1992, (2) Amendment No. 168 to License No. DPR-65, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555, and at the local public document room located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland this 23rd day of December 1992.

For the Nuclear Regulatory Commission.

David H. Jaffe,

Acting Senior Project Manager, Project Directorate I-4, Division of Reactor Projects—II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-31710 Filed 12-29-92; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-336]

Northeast Nuclear Energy Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 167 to Facility Operating License No. DPR-65 issued to Northeast Nuclear Energy Company (the licensee), which revised the Technical Specifications for operation of the Millstone Nuclear Power Station, Unit No. 2 located in New London County, Connecticut. The amendment is effective as of the date of issuance.

The amendment incorporates into the Technical specifications changes in the area of Tables 3.3-3, 3.3-4, 3.3-5 and

4.3-2, of Section 4.8.1.1.2 and of the Bases Section 3/4.3, to add the high containment pressure signal as an input to main steam isolation (MSI) and to reduce the feed isolation portion of MSI from 60 seconds to 14 seconds.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the *Federal Register* on November 10, 1992 (57 FR 53518). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment (57 FR 61101).

For further details with respect to the action see: (1) The application for amendment dated October 28, 1992, as supplemented November 20, 1992 and December 4, 1992, (2) Amendment No. 167 to License No. DPR-65, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland this 23rd day of December 1992.

For the Nuclear Regulatory Commission

David H. Jaffee,

Acting Senior Project Manager, Project Directorate I-4, Division of Reactor Projects—II, Office of Nuclear Reactor Regulation.

[FR Doc. 92-31711 Filed 12-29-92; 8:45 am]

BILLING CODE 7590-01-M

PENSION BENEFIT GUARANTY CORPORATION

Request for Extension of Approval Under the Paperwork Reduction Act; Collection of Information Under 29 CFR Part 2646, Reduction or Waiver of Partial Withdrawal Liability

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: This notice advises the public that the Pension Benefit Guaranty Corporation has requested extension of approval by the Office of Management and Budget for a currently approved collection of information (1212-0039) contained in its regulation on Reduction or Waiver of Partial Withdrawal Liability (29 CFR part 2646). Current approval of the collection of information expires on February 28, 1993.

ADDRESSES: All written comments should be addressed to: Office of Management and Budget, Paperwork Reduction Project (1212-0039), Washington, DC 20503. The request for extension will be available for public inspection at the PBGC Communications and Public Affairs Department, suite 7100, 2020 K Street, NW., Washington, DC 20006, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202-778-8850 (202-778-1958 for TTY and TDD).

SUPPLEMENTARY INFORMATION: This collection of information is contained in the Pension Benefit Guaranty Corporation's ("PBGC's") regulation on Reduction or Waiver of Partial Withdrawal Liability (29 CFR part 2646).

Section 4208(e)(3) of the Employee Retirement Income Security Act of 1974 ("ERISA") requires the PBGC to prescribe by regulation a procedure whereby multiemployer pension plans can adopt rules for the abatement of partial withdrawal liability, subject to PBGC approval. Approval of such rules is to be based on a determination that the adoption of such rules is consistent with the purposes of ERISA. The regulation on Reduction or Waiver of Partial Withdrawal Liability is issued pursuant to this statutory requirement.

Section 2646.8 of the regulation prescribes the information that must be submitted to the PBGC under the regulation by a plan seeking PBGC approval of plan abatement rules. This

information is used by the PBGC to determine whether the rules satisfy the statutory standard.

The PBGC estimates that ten multiemployer plans per year will submit information under the regulation and that it will take one-half hour to prepare a submission, for a total annual burden of five hours.

Issued at Washington, DC, this 22nd day of December, 1992.

James B. Lockhart III,
Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 92-31596 Filed 12-29-92; 8:45 am]

BILLING CODE 7708-01-M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of public hearing and meeting.

SUMMARY: The Commission will hold its next public meeting on January 14-15, 1993 at the Embassy Suites Hotel, 1250 22nd Street NW., Washington, DC, 202-857-3388, in the Consulate Meeting Room (lobby level). The meetings are tentatively scheduled to begin at 9 a.m. each day. Issues to be discussed include, but are not limited to, an analysis of experience under the Medicare Fee Schedule, the impact of the fee schedule on private payers, physician supply and graduate medical education, data systems under health care reform, payment for anesthesia services, resource-based practice expenses, risk-of-service basis for malpractice expense, Medicare volume performance standards, and an analysis of the Commission's survey of physicians.

ADDRESSES: The Commission is located at 2120 L Street, NW., in suite 510, Washington, DC. The telephone number is 202/653-7220.

FOR FURTHER INFORMATION CONTACT: Annette Hennessey, Executive Assistant, or Laurent LeRoy, Deputy Director, at 202/653-7220.

SUPPLEMENTARY INFORMATION: Information on the exact agenda for the public meetings can be obtained on Friday, January 8, 1993. Copies of the agenda will be mailed at that time. Please direct all requests for the agenda to the Commission's receptionist.

Paul B. Ginsburg,
Executive Director.

[FR Doc. 92-31595 Filed 12-29-92; 8:45 am]

BILLING CODE 9820-SE-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-31628; File No. SR-Amex-92-42]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Listing and Trading of Equity Linked Notes

December 21, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 25, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex, pursuant to Rule 19b-4 under the Act, proposes to amend section 107 of the *Amex Company Guide* ("Section 107") to provide additional criteria for the listing of Equity Linked Notes ("ELNs"), debt instruments whose value will be linked to the performance of a highly capitalized, actively traded common stock.

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.¹

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C)

below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

Under Section 107 (Other Securities), the Exchange may approve for listing securities which have features common to debt, equity and derivative instruments alike.² The Amex is now proposing to amend Section 107 to provide added criteria governing the listing of ELNs, intermediate-term (i.e., 2-7 years) debt instruments whose value will be linked to the performance of a highly-capitalized, actively traded common stock ("Equity Link").

ELNs may, or may not, provide for periodic interest payments (based on a fixed or floating rate), may, or may not, feature a "cap" on the maximum amount to be repaid upon maturity of the ELN, and may, or may not, feature a "floor" on the minimum amount to be repaid upon maturity of the ELN. The Exchange believes that the added listing flexibility will permit the creation of securities which will offer investors the opportunity to more precisely focus on a specific investment strategy.

ELNs will conform to the listing guidelines under section 107, which provide that (1) issues must have a minimum public distribution of one million trading units with a minimum of 400 holders, an aggregate market value of \$20 million, and, where applicable, cash settlement in U.S. dollars and redemption price of at least \$3; and (2) the issuers of such securities must have assets of \$100 million, stockholders' equity of \$10 million, and pre-tax income of at least \$750,000 in the last fiscal year or in two of the three prior fiscal years.³

Although the Exchange does not believe that ELNs will have any impact on the trading market for the underlying linked stock, it nevertheless proposes that: (1) Each underlying (linked) stock must have a minimum market capitalization of \$3 billion; and (2) the trading volume of the linked stock (in all markets in which the underlying security is traded) must have been at least 2.5 million shares in the 12-month period preceding the listing of the ELNs. In addition, the issuance of ELNs

relating to an underlying (linked) stock may not exceed 5% of the total outstanding shares of such stock.

In accordance with the Hybrid Products Approval Order, prior to trading ELNs, the Exchange will distribute a circular to its membership providing guidance regarding member firm compliance responsibilities (including suitability recommendations) when handling transactions in ELNs.

(2) Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (a) By order approve such proposed rule change, or
- (b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements

¹ The proposal was amended on December 18, 1992, to clarify that each separate issuance of ELNs may only be linked to one underlying common stock. See Letter from Benjamin Krause, Senior Vice President, Capital Markets Group, Amex, to Stephen M. Youhn, Staff Attorney, Options Regulation, Division of Market Regulation, SEC, dated December 18, 1992.

² See Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 ("Hybrid Products Approval Order").

³ Issuers not meeting these financial criteria must have assets in excess of \$200 million and stockholders' equity of \$10 million, or, alternatively, assets in excess of \$100 million and stockholders' equity of \$20 million.

with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 21, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 92-31642 Filed 12-29-92; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-31627; International Series Release No. 513; File No. SR-Amex-92-36]

Self-Regulatory Organizations; Notice of Filing of Amendments to and Order Granting Accelerated Approval of a Proposed Rule Change by the American Stock Exchange, Inc. Relating to Warrants Based on Multiple Foreign Currencies

December 21, 1992.

I. Introduction

On October 2, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(2) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to list and trade warrants based on the value of the U.S. dollar in relation to multiple foreign currencies ("Multiple Foreign Currency Warrants" or "Warrants"). On November 5, 1992, the Amex filed Amendment No. 1 ("Amendment No. 1") to the proposal to provide that the Warrants may only be sold to options-approved accounts and that all discretionary orders in the Warrants must be approved and initiated on the day entered by a Senior Registered Options Principal ("SROP") or a Registered Options Principal

("ROP").³ On December 15, 1992, the Amex filed Amendment No. 2 ("Amendment No. 2") to the proposal to provide that the Warrants may only have American-style exercise (*i.e.*, exercisable throughout the term of the Warrant).⁴ This order approves the Amex's proposal.

Notice of the proposed rule change was published for comment in the Federal Register on October 19, 1992.⁵ No comments were received on the proposal.

II. Description of the Proposal

The Exchange currently trades foreign currency warrants based upon the value of the U.S. dollar in relation to a single foreign currency (*e.g.* Japanese yen, German mark, British pound)⁶ and has the approval to trade warrants based upon the value of the U.S. dollar in relation to a basket of Ten Foreign Currencies ("Foreign Currency Basket Warrants").⁷ Pursuant to Section 106 of the Amex Company Guide, the Exchange now proposes to list and trade warrants based on the value of the U.S. dollar in relation to multiple (two or

more) major foreign currencies.⁸ For example, a Warrant may be based on the value of the U.S. dollar in relation to the French franc, German mark and British pound, according to specific terms and pre-determined base prices established by the issuer.

Such Warrant issues will conform to the listing guidelines in section 106 of the Amex Company Guide, which provide that: (1) The issuer shall have assets in excess of \$100,000,000 and otherwise substantially exceed the size and earnings requirements in Section 101(a) of the Company Guide; (2) the term of the Warrants shall be for a period ranging from one to five years from date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants, together with a minimum of 400 public holders, and an aggregate market value of \$4,000,000.

The Amex further proposes that the Multiple Foreign Currency Warrants must be direct obligations of their issuers, subject to cash-settlement during their term, and exercisable throughout their life (*i.e.*, American-style). Cash-settlement of these instruments will be based upon the value of the underlying multiple foreign currencies in relation to a pre-determined base price for the multiple foreign currencies. In particular, with a Multiple Foreign Currency Warrant structured as a "put," if the value of the multiple foreign currencies falls below a pre-determined base price, the Warrant can be expected to increase in value. Conversely, a Multiple Foreign Currency Warrant structured as a "call" would increase in value if the value of the multiple foreign currencies were to rise above a pre-determined base price. As with options, Warrants which are "out-of-the-money" at the end of their stated term will expire worthless.

The Amex has adopted suitability standards applicable to investors in the Warrants. Amex member firms will be advised that the Warrants may be sold only to investors whose accounts have been approved for options trading pursuant to Amex Rule 921.⁹ The Amex also will require that discretionary orders in the Warrants be approved and initiated on the day entered by either a SROP or ROP.¹⁰ In addition, prior to the commencement of trading in any Warrant, the Exchange will distribute a circular to its membership calling

³ Originally, the Amex proposed to apply the suitability standard contained in Amex Rule 411, Commentary .01 to recommendations to customers of transactions in the Warrants. Under Commentary .01 to Amex Rule 411, the Exchange recommends to member firms that currency warrants listed under section 106 of the Amex Company Guide only be sold to investors whose accounts have been approved for options trading pursuant to Amex Rule 921. Notwithstanding the provisions of Rule 411, the Amex, on November 5, 1992, amended the filing to provide that the Warrants can only be sold to options approved accounts. See letter from Benjamin D. Krause, Senior Vice President, Capital Markets Group, Amex, to Thomas Gira, Branch Chief, Options Regulation, Division of Market Regulation, SEC, dated November 5, 1992 ("Amex Letter").

⁴ Originally, the Amex proposed that the Warrants could be either American-style or European-style (*i.e.*, exercisable only on their expiration date). See Letter from Benjamin D. Krause, Senior Vice President, Capital Markets Group, Amex, to Thomas Gira, Branch Chief, Options Regulation, Division of Market Regulation, SEC, dated December 15, 1992.

⁵ See Securities Exchange Act Release No. 31308 (October 9, 1992), 57 FR 47680.

⁶ The Commission approved listing requirements applicable to foreign currency warrants in Securities Exchange Act Release No. 24555 (June 5, 1987) 52 FR 22570 (SR-Amex-87-15).

⁷ On January 27, 1992, the Commission approved the Amex's Foreign Currency Basket Warrants for trading. The currencies within the basket, which are weighted in accordance with the U.S. Dollar Index established and published by the Board of Governors of the Federal Reserve System ("Fed USDIX"), and their respective weightings are as follows: (1) Deutsche Mark (20.8%); (2) Japanese Yen (13.6%); (3) French Franc (13.1%); (4) British Pound (11.9%); (5) Canadian Dollar (9.1%); (6) Italian Lira (9%); (7) Dutch Guilder (8.3%); (8) Belgian Franc (6.4%); (9) Swedish Krona (4.2%); and (10) Swiss Franc (3.6%). See Securities Exchange Act Release No. 30289 (January 27, 1992), 57 FR 3806.

⁸ Under the proposal, the Exchange will limit such foreign currencies to the following: Australian dollar; British pound; Canadian dollar; French franc; German mark; Japanese yen; and Swiss franc.

⁹ See *supra* note 3.

¹⁰ *Id.*

¹ 15 U.S.C. 78s(b)(1) (1982).

² 17 CFR 240.19b-4 (1991).

attention to specific risks associated with the Warrant.

III. Commission Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).¹¹ The Commission finds that the trading of Multiple Foreign Currency Warrants will permit investors to participate in favorable price movements of the underlying foreign currencies in relation to the U.S. dollar. The Commission also believes that the trading of Warrants will allow investors holding positions in some or all of the currencies underlying the Warrants to hedge the risks associated with their portfolios. Accordingly, the Commission believes the Multiple Foreign Currency Warrants will provide investors with an important trading and hedging mechanism that should reflect accurately the value of the U.S. dollar in relation to the foreign currencies underlying the Warrants. By broadening the hedging and investment opportunities of investors, the Commission believes that the trading of Multiple Foreign Currency Warrants will serve to protect investors, promote the public interest, and contribute to the maintenance of fair and orderly markets.¹²

The trading of Multiple Foreign Currency Warrants, however, raises several issues, including issues related to product design, customer protection, surveillance and market impact. For the reasons discussed below, the Commission believes that the Amex has adequately addressed these issues.

A. Warrant Design and Structure

The Multiple Foreign Currency Warrants are the first warrants proposed to be traded on a U.S. exchange that are based on multiple (two or more) foreign currencies which are not weighted in accordance with a specific index.¹³ While no comments were submitted questioning the legal status of the Warrants, the Commission nevertheless has analyzed the Multiple Foreign Currency Warrants and found them to be "securities" within the meaning of section 3(a)(10) of the Act and, thus, within the Commission's jurisdiction. Under section 3(a)(10) of the Act a "security" is defined as "any put, call, straddle, option or privilege entered into on a national securities exchange relating to foreign currency (emphasis added)." The Warrants "relate" to foreign currency because their values will be based upon the values of the multiple underlying foreign currencies.¹⁴ Moreover, because the Warrants are the economic equivalent of a long-term option, and in any event will be structured as puts or calls, they are properly characterized as long-term puts, calls or options relating to foreign currency.¹⁵ In addition, the Commission notes that the Amex proposal provides that only foreign currencies from seven major industrialized countries, all of which have active spot markets and currently underlie standardized options traded on the Philadelphia Stock Exchange, are eligible to be included within the group of foreign currencies underlying a Warrant. The Commission believes this restriction will serve to ensure that the prices of the currencies

underlying the Warrants will be sound.¹⁶

As a general matter, the Commission believes that for new products provision should be made to ensure the real-time dissemination of the value of the underlying instrument. In this regard, however, the Commission believes that the trading of certain Multiple Foreign Currency Warrants without the real-time dissemination of the value of the underlying currencies would be consistent with the Act. For example, it may be acceptable to permit the trading of an American-style, equally-weighted Warrant based on the three most actively traded currencies, *i.e.*, the Japanese yen, British pound, and Deutsche mark, with less than real-time dissemination of the aggregate value of the currencies. In this limited context, as an alternative to providing for the real-time dissemination of the aggregate value of the currencies underlying the Warrants, the Commission believes that it would be acceptable for the Amex to rely on the availability of real-time information concerning the individual values of the currencies underlying the Warrants for several reasons.

First, movements in the three currencies noted above are followed worldwide and the spot markets for these currencies are very active, making information on the currencies widely and easily available. Second, the equal weighting of the three currencies underlying the Warrant would help to ensure that the aggregate value of the Warrant is relatively easy to calculate for most investors. Third, the foreign currency market tends to be dominated by institutions and other relatively sophisticated investors. Fourth, because the Warrants would have American-style exercise, the Commission believes this would serve to minimize any pricing discrepancies that might arise between the value of the Warrants and the value of the underlying currencies.¹⁷

Even though this approval order approves the generic standards applicable to the listing and trading of Multiple Foreign Currency Warrants, the Commission expects that the Amex will notify the Commission when it intends to list a new Warrant on a case-by-case basis. Once notified, the Commission will evaluate, among other things: (1) Whether the valuation method for the underlying foreign currencies will result in a fair and accurate valuation of the currencies; (2) whether the issuer of the Warrant is sufficiently detached from the valuation of the underlying currencies, or has developed appropriate internal procedures to facilitate such valuations by the issuer in a fair manner, so as not to be able to affect the values of the underlying foreign currencies; and (3) whether there is adequate dissemination of the value of the group of foreign currencies underlying the Warrant.

In this regard, we note that the Amex originally proposed to list warrants with either European or American-style exercise. However, on December 15, 1992, the Amex amended its proposal to provide

¹¹ 15 U.S.C. 78f(b)(5) (1988).

¹² Pursuant to section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such new product is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In the case of the Multiple Foreign Currency Warrants, these products will benefit U.S. investors by allowing them to obtain differential rates of return on a capital outlay if the value of the component multiple foreign currencies moves in a favorable direction within a specified time period. Thus, the trading of these Warrants will provide investors with a valuable hedging vehicle that should reflect accurately the value of the U.S. dollar in relation to the foreign currencies underlying the Warrants.

¹³ See *supra* note 6.

¹⁴ While section 4(c)(f) of the Commodity Exchange Act ("CEA") excludes from Commodity Futures Trading Commission ("CFTC") jurisdiction options "on" foreign currency rather than options that "relate" to foreign currency, as is the case under the Act, the Commission does not find this distinction to be significant. The relevant clauses in the CEA and the Act were intended to divide jurisdiction pursuant to where the foreign currency options trade. In any event, the Multiple Foreign Currency Warrants are "on" foreign currency.

¹⁵ Whether or not the Multiple Foreign Currency Warrant itself is a foreign currency is irrelevant because its value is comprised of the various component multiple foreign currencies. Therefore, warrants on multiple foreign currencies are "securities" because they literally are puts, calls, or options that relate to foreign currency (regardless of whether the underlying instrument is characterized as an index, basket, group, or combination of currencies). The cash-settled nature of the Warrants does not change the fact that they relate to foreign currency. Indeed, several cash-settled warrants on individual foreign currencies have been trading on national securities exchanges for some time. See letter from Richard G. Ketchum, Director, Division of Market Regulation, SEC, to Robert B. Hiden, Jr., Sullivan and Cromwell, and Benjamin D. Krause, AMEX, dated April 21, 1987.

These factors, coupled with the requirement in the rule proposal that Multiple Foreign Currency Warrants may be sold only to options approved accounts, will help to ensure that investors in such Warrants are familiar with, and have access to information on, the valuation of the currencies underlying the Warrants. In summary, the combination of the above-noted factors would allow the Commission to conclude, on a case-by-case basis, that the real-time dissemination of the aggregate value of the currencies underlying a Warrant may not be necessary.

Notwithstanding the above, the Commission still believes that it would be useful and beneficial to investors and market participants to receive the aggregate value of the currencies underlying a Warrant on a real-time basis. Accordingly, the Commission believes that the Amex should continue to work on developing the capability to disseminate the underlying value of all Multiple Foreign Currency Warrants, including those meeting the standards outlined above, on a real-time basis.

B. Customer Protection

Multiple Foreign Currency Warrants are "securities," due to their derivative nature and the risks of trading in the Warrants are virtually identical to the risks of trading standardized options on foreign currencies. Accordingly, the Commission agrees with the Exchange that these Warrants only should be sold to options-approved accounts capable of evaluating and bearing the risks associated with trading in these instruments, in accordance with Amex Rule 921, and that adequate disclosure of the risks of these products must be made to investors. In this regard, the Commission notes that the rules and procedures of the Exchange that address the special concerns attendant to the secondary trading of foreign currency warrants will be applicable to the Warrants. In particular, by imposing the special suitability and disclosure requirements noted above, the Amex has addressed adequately the potential public customer concerns that could arise from the derivative nature of Multiple Foreign Currency Warrants. Moreover, the Exchange plans to distribute a circular to its members calling attention to the specific risks associated with Multiple Foreign Currency Warrants and, pursuant to the Exchange's listing guidelines, only substantial companies capable of meeting their Warrant obligations will

be eligible to issue the Warrants. Finally, SROP's or ROP's will be required to approve and initial all discretionary orders in Multiple Foreign Currency Warrants on the day they are entered.¹⁸

C. Surveillance

In addition, the Commission notes that the Warrants will be subject to the same surveillance procedures as the Amex's other foreign currency warrants.¹⁹ Moreover, in light of the design of the Multiple Foreign Currency Warrants and the developed markets for the component foreign currencies, the Commission believes that the markets for the Warrants will not be readily susceptible to manipulation.²⁰

D. Market Impact

The Commission further believes that the listing and trading of Multiple Foreign Currency Warrants on the Exchange will not adversely affect the spot or derivative foreign currency markets. First, the Commission notes that the interbank foreign currency spot market is an extremely large, diverse market comprised of banks and other financial institutions worldwide. That market is supplemented by equally deep and liquid markets for standardized options and futures on foreign currencies and options on those futures. An active over-the-counter market also exists in options for foreign currencies. In addition, given the anticipated costs of the Warrants coupled with the amount of capital one would likely have to expend to affect the cash markets for the currencies underlying the Warrants (or any derivative market related thereto), the Commission believes the risk/reward relationship is such that it is unlikely that a market participant would attempt to manipulate the cash markets for the currencies underlying the Warrants, or any derivative market related thereto, to benefit a previously established Warrant position.

Second, the Amex will apply its existing foreign currency warrant surveillance procedures to the Warrants, which the Commission previously has found to be adequate to surveil for manipulation and other abuses involving the warrant market and the markets for the underlying foreign currencies. Accordingly, the Commission does not believe that the introduction of Multiple Foreign Currency Warrants by the Amex will have a significant adverse effect on the

underlying interbank foreign currency market.

Finally, the Commission realizes that the Warrants, unlike standardized options, do not contain a clearinghouse guarantee and instead are dependent upon the individual credit of the issuer. This heightens the possibility that an exerciser of Warrants may not be able to receive full cash settlement upon exercise. To some extent this risk is minimized by the Exchange's standard that Warrant issuers possess at least \$100,000,000 in assets. In any event, financial information regarding the issuers will be disclosed or incorporated in the prospectuses accompanying the offerings of the Warrants. In addition, as noted above, for each Warrant issue, the Amex will issue a circular to its membership describing the special risks associated with the Warrants.

There is a systemic concern, however, that broker-dealers or broker-dealer subsidiaries issuing Warrants or providing a hedge for the issuer will incur position exposure. This position exposure, if left partially hedged or dynamically hedged, could not only create a risk of non-performance but add a systemic risk in that the broker-dealer will have to dynamically hedge the position to minimize losses should the market turn against it. To date, however, the warrant issuances have been so small in relation to the issuers' total equity positions as not to raise significant concerns. Nevertheless, the Exchange should continue to monitor this area.

The Commission finds good cause for approving Amendments No. 1 and 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the *Federal Register*. Because Amendment No. 1 provides that the Warrants may only be sold to options-approved accounts and that discretionary orders in such Warrants must be approved and initialed on the day entered by a SROP or ROP, the Commission believes the Amendment strengthens the sales practice rules applicable to the Warrants. Similarly, because Amendment No. 2 provides that the Warrants may only have American-style exercise, the Commission believes the Amendment minimizes the likelihood that any pricing discrepancies may arise between the values of the Warrants and their underlying currencies. Accordingly, the Commission believes the Amendments raise no new or unique regulatory issues. In addition, no comments were received on the Amex's original rule proposal which included certain recommended account approval

¹⁸ See *supra* note 3 and accompanying text.

¹⁹ Currently, the Amex trades a variety of cash-settled warrants based on the Deutsche Mark and Japanese Yen.

²⁰ See also *supra* note 16.

that only American-style Warrants may be listed on the exchange. See *supra* note 4.

procedures and provided for the use of American as well as European-style exercise. Therefore, the Commission believes it is consistent with sections 6(b)(5) and 19(b)(2) of the Act to approve Amendments No. 1 and 2 to the Amex's proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendments No. 1 and 2 to the Exchange's proposal. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-92-36 and should be submitted by January 21, 1993.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,²¹ that the proposed rule change (File No. SR-Amex-92-36) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²²

Jonathan G. Katz,
Secretary.

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[Release No. 34-31633; File Nos. SR-MSE-92-12 and SR-MSE-92-13]

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Order Approving Proposed Rule Changes and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Changes Relating to Its Organization and Governance

December 22, 1992.

I. Introduction

On November 6, 1992, the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² two proposed rule changes to reorganize the Exchange's governance structure. The first proposal would amend the MSE's Certificate of Incorporation and Constitution. This rule filing would revise the duties of the Exchange's senior officers and the process by which they are selected; it would also alter the composition of the Board of Governors and the Nominating Committee.³ The second governance proposal would make conforming changes to the Exchange's Rules and would restructure certain committees authorized therein.⁴

Notice of the proposals appeared in the *Federal Register* on November 20, 1992.⁵ No comments were received. On December 18, 1992, an amendment was filed by the MSE providing specific guidelines for appointing the Audit Committee.⁶ This order approves the proposed rule changes, including Amendment No. 1.

II. Background

Currently, the MSE's Chairman of the Board is also the MSE's chief executive officer.⁷ He is appointed by the Board and has responsibility for the Exchange's business and regulatory affairs.⁸ The Chairman, subject to Board

approval, then appoints the President of the Exchange, who serves as the MSE's chief operating officer.⁹ The Vice Chairman of the Board is elected by the members from among themselves. The Vice Chairman has the power, subject to Board approval, to appoint the members of certain Exchange committees.¹⁰

Management, as described above, is supervised by the MSE Board. The MSE Board currently consists of the senior officers of the Exchange (*i.e.*, the Chairman, Vice Chairman and President) plus twenty-four elected Governors.¹¹ Candidates for Governor (as well as for Vice Chairman) are recommended by the Nominating Committee for voting on by the members.¹² At the moment, the Nominating Committee is made up of three Exchange members elected directly by the membership.¹³

The Board, however, has delegated much of its authority over daily operations to the Executive Committee and, to a lesser extent, the other committees of the Exchange. Between Board meetings, the Executive Committee exercises all the powers of the full Board. Currently, it is comprised of nine members: the three senior officers and six Governors appointed by the Vice Chairman. The Vice Chairman also names, subject to MSE Constitution and MSE Rule guidelines and MSE Board approval, the members of most other committees, including the Audit, Floor Procedure, Specialist Assignment and Evaluation, Finance and Compensation Committees.¹⁴

III. Description of the Proposals

The Exchange proposes to transfer the duties of the CEO from the Chairman to the President.¹⁵ Rather than being a full-

Committee when necessary for consideration of appeal of disciplinary actions; approve wire connections and communications on the trading floor; suspend or restrict member operations due to financial or operational difficulty and, in that regard, sell memberships and distribute proceeds for insolvency, non-payment of fines, etc.; conduct and decide disciplinary actions; suspend and remove securities from trading; and inspect books and records.

⁹ See Art. VI, Sec. 4 of the MSE Constitution.

¹⁰ See Art. VI, Sec. 3 of the MSE Constitution.

¹¹ See Art. III, Sec. 2 of the MSE Constitution.

¹² See Art. IV, Sec. 4 of the MSE Constitution. The Nominating Committee also recommends candidates to run for election to the next Nominating Committee.

¹³ Any Exchange member, whether floor or upstairs, can sit on the Nominating Committee. See Art. IV, Sec. 3 of the MSE Constitution. The MSE has indicated that, in recent years, floor members have held all three seats on this Committee.

¹⁴ For further discussion of the composition and powers of the various committees, see Art. V. of the MSE Constitution; Art. IV of the MSE Rules.

¹⁵ The substantive powers of the CEO would remain the same. See, *supra*, note 8. Only the officer

²¹ 15 U.S.C. 78s(b)(2) (1988).

²² 17 CFR 200.30-3(a)(12) (1990).

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1991).

³ File No. SR-MSE-92-12.

⁴ File No. SR-MSE-92-13.

⁵ See Securities Exchange Act Release Nos. 31463 (November 16, 1992), 57 FR 54882 (November 20, 1992); 31466 (November 16, 1992), 57 FR 54883 (November 20, 1992).

⁶ See letter from J. Craig Long, Vice President, General Counsel and Secretary, MSE, to Jonathan Katz, Secretary, SEC, dated December 17, 1992 ("Amendment No. 1").

⁷ See Art. VI, Sec. 2 of the MSE Constitution.

⁸ Pursuant to the MSE's rules, the chief executive officer's ("CEO") powers include the following: he can extend the time frames and approvals for membership registration issues; appoint Judiciary

time executive, the Chairman would only serve part-time, in a non-management capacity, and would be responsible primarily for Board oversight of management performance.¹⁶ The Board would choose its Chairman from among the elected Governors. The President, who (as CEO) would now run the MSE's business and regulatory affairs, would also be appointed by the Board and serve at its pleasure.¹⁷ The selection and powers of the Vice Chairman would not be affected by the proposals, except that only floor members would be eligible for the position.¹⁸ The Chairman and Vice Chairman would each serve a two-year term with a two-term limit.

The Exchange also proposes to restructure its Board and committees. First, because the Chairman would be appointed from among (rather than in addition to) the elected Governors, the size of the Board would be reduced by one.¹⁹ In this regard, the proposals would establish guidelines for how many public and member Governors must serve on the Board. Specifically, the proposals would amend MSE's Constitution to require a Board consisting of exactly sixteen member Governors and eight non-member Governors.²⁰

Second, the Nominating Committee would be expanded and its composition

diversified. The proposed rule changes would create a five-person Nominating Committee. As before, three Nominating Committee members must be MSE members, but, for the first time, the three would be broken down by constituency: One floor member, one "upstairs" member and one from either category. The remaining two members of the Nominating Committee would be non-member, or public, representatives appointed by the Board. The Board could, but is not required to, select the non-member Committee members from among the public Governors on the Board.

The proposals also would revise the composition of the MSE's Executive Committee. Under the proposals, the size (i.e., nine members) of the Executive Committee would remain the same. The Chairman of the Board, as well as the President, would continue to be ex-officio members of this Committee, but the proposals would amend MSE's Constitution to require that the Chairman also serve as the Executive Committee's Chairman, with full voting powers. The Vice Chairman would lose his ex-officio seat on the Executive Committee. His place would be taken by an additional Governor. As a result, Governors would comprise seven (rather than six) of the nine members of the Committee.²¹ These seven Governors would be appointed by the Vice Chairman, with the approval of the Board. In the past, the Vice Chairman has appointed an equal number of Governors from each Exchange constituency (the floor, "upstairs firms" and the public). The MSE's Vice Chairman and President-Designate have undertaken to use their best efforts to ensure that this pattern of diversity continues in the future.²²

The Exchange also proposes to revise the composition of its Audit Committee. The basic structure of the Committee (i.e., a minimum of three Governors) would not be changed. The proposals, however, would require that a majority of the voting members of the Audit Committee must be non-floor Governors and that the Audit Committee's Chairman must be a public Governor. In the event that the number of voting members includes five or more Governors, a second public

representative, at a minimum and if practicable, would be appointed.²³ The MSE believes that the proposed amendments would foster an independent and objective Audit Committee while, at the same time, ensuring that all Exchange constituencies are fairly represented therein.

The MSE proposes to formalize the duties of two additional committees. First, the ad hoc Committee on Organization and Governance would become a standing committee of the Board. This Committee would consist of the Chairman of the Board (but never the President) and at least five other Governors. The Committee would be responsible for periodic review of the organization and governance structure of the Exchange and its subsidiaries and, when appropriate, would make recommendations to the Board. Second, the Rules would be amended to clarify that the Compensation Committee determines the benefits, as well as compensation, policy of the MSE.²⁴

Finally, the MSE proposes to change the date of its annual meeting from the second Monday in January to the second Tuesday in April, unless the Board, for good cause, determines otherwise. This would enable the Chairman and President to present their annual reports to the members prior to the annual meeting. The proposed rule changes would also permit the MSE's Certificate of Incorporation to be amended by a simple majority vote of the members (present, in person or by proxy, at the meeting during which the amendment is submitted). As a result, the same number of member votes would be needed to amend the Certificate of Incorporation or the Constitution. More generally, the MSE proposals would conform the Rules of the Exchange with proposed amendments to the Certificate of Incorporation and Constitution, and would eliminate references, in any of the above, to the now defunct options program.

The MSE believes that the proposed rule changes will increase management accountability to the membership, increase membership participation in the senior officer selection process, and improve communication among the membership, management and the Board. The MSE states that the proposed rule changes are consistent with section 6(b)(3) of the Act in that they help to assure a fair representation of the

who exercises them would change as a result of these rule filings.

¹⁶ The Chairman would be required to make an annual report to the membership. The Chairman would also preside at meetings of the Board and the Exchange and would have the power to call special meetings of the Board, Exchange or any committee. The Chairman of the Board would automatically become Chairman of the Executive Committee, with the right to vote; would not be a member of the Nominating Committee; and would be an ex-officio member (without the right to vote) of all remaining Exchange committees.

¹⁷ The President, during his incumbency, could not be a member of the Exchange or affiliated in any way with a member organization. He also would be required to make an annual report to the members. The President would be an ex-officio member, without the right to vote, of all committees; he would not be a member, ex-officio or otherwise, of the Nominating, Audit and Compensation Committees.

¹⁸ In addition, the Vice Chairman would no longer be an ex-officio member of any committee, nor would he retain the power to call Board or Executive Committee meetings.

¹⁹ These proposals would reduce the number of people on the Board from twenty-seven (the twenty-four elected Governors plus the Chairman, Vice Chairman and President) to twenty-six (the twenty-four elected Governors plus the Vice Chairman and President). Whoever is appointed Chairman would still serve on the Board, but only because the Board must fill that position from among the twenty-four elected Governors.

²⁰ The Constitution would continue to specify that nine of the member Governors must be from Chicago (at least three of whom must be active on the floor of the Exchange) and seven must be from outside Chicago. See Art. IV, Sec. 4(b)(1) of the MSE Constitution.

²¹ The Chairman and the President would, by virtue of their offices, also sit on the Executive Committee. Along with the seven Governors, this would bring the total number of members to nine.

²² See letter from John L. Fletcher, Vice Chairman, and Homer J. Livingston, President-Designate, MSE, to Brandon C. Becker, Deputy Director, Division of Market Regulation, Commission, dated December 17, 1992 ("MSE December 17 Letter").

²³ See Amendment No. 1, *supra*, note 6.

²⁴ As amended, the Compensation Committee would consist of the Chairman of the Board and a minimum of two Governors, at least one of whom must represent the public.

Exchange's members in the selection of its directors and the administration of its affairs. The proposed rule changes, in the MSE's view, are also consistent with section 6(b)(1) in that they help to assure that the Exchange is so organized and has the capacity to be able to carry out the purposes of the Act and to comply, and to enforce compliance by its members, with the Act.

IV. Discussion

The Commission has reviewed the revisions to the MSE's Certificate of Incorporation, Constitution and Rules to determine whether they are consistent with the Act. For the reasons discussed below, the Commission believes that these proposed rule changes are consistent with the requirements of the Act, and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6 of the Act.²⁵

In reviewing the MSE's governance proposals, the Commission specifically applied the standards of sections 6(b)(1), 6(b)(3) and 6(b)(5) under the Act. Section 6(b)(1) of the Act requires that an exchange be organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members, with the Act, the rules and regulations thereunder and the rules of the Exchange. Section 6(b)(3) of the Act requires that the rules of an exchange assure a fair representation of its members in the selection of its directors and administration of its affairs and provide that one or more directors represent issuers and investors and not be associated with a member of the exchange or a broker-dealer. Finally, section 6(b)(5) of the Act requires, among other things, that the rules of an exchange be designed, in general, to protect investors and the public interest.

The Commission believes that the proposals, while raising some concerns about floor domination of the governance of the Exchange, strike an appropriate balance between the various constituencies of the MSE and, therefore, are consistent with the aforementioned provisions of the Act. As a general matter, the Commission believes the proposed rule changes, taken together, should result in increased management accountability to the membership and help to ensure that all Exchange constituencies are adequately represented in its governance.²⁶

For example, the Commission believes that the proposals to diversify the composition of the MSE's Nominating and Audit Committees²⁷ should increase public participation on these Committees and ensure adequate representation of both floor members and "upstairs firms." In reaching such a conclusion, the Commission recognizes the far-reaching implications of these rule changes. The Nominating Committee plays an important role in the annual election of the Board (as well as of the Vice Chairman and next Nominating Committee).²⁸ By preventing the Nominating Committee from being dominated by any one constituency and by mandating minimum public representation therein, these revisions should help assure that candidates for Exchange offices, both elected and appointed, broadly reflect the MSE as a whole.²⁹

The Audit Committee plays a similarly important role in managing the financial affairs of the Exchange.³⁰ As with the Nominating Committee, these amendments ensure increased public representation on the Audit Committee and prevent it from being dominated by floor members. These changes should result in an Audit Committee which is more representative of the interests of Exchange members and the public. Moreover, diversifying the Audit Committee should increase the independence of its oversight of the MSE's financial procedures. Indeed, under the proposals, the MSE Audit Committee will be independent of MSE

the Act. The restructured Board would consist of exactly sixteen member Governors and eight non-member Governors, thereby clarifying the precise number of Governors representing membership and the public. As currently drafted, the MSE's Rules require fifteen member Governors, eight non-member Governors and one additional Governor from either category. Accordingly, the proposals could, in theory, reduce public representation on the Board by one seat. The MSE, however, has represented that this seat traditionally has been filled by a member and that the proposals merely codify existing practice.

²⁷ See, *supra*, text accompanying notes 19-23.

²⁸ The Nominating Committee, following consultation with the President and Chairman of the Board, reports nominees for the following positions: Vice Chairman of the Board, Governors and the three member Committee members of the next Nominating Committee.

²⁹ These revisions would effect appointed Exchange officials only indirectly. A more diverse Nominating Committee should lead to a more diverse Board which should, in turn, apply heightened scrutiny to the Vice Chairman's appointments.

³⁰ The Audit Committee recommends appointment of independent auditors and, with such auditors, annually reviews the scope of their examination. Among other things, the Audit Committee also periodically assesses, again with the independent auditors, the Exchange's internal controls and the adequacy of its internal audit program.

management. The importance of an independent Audit Committee cannot be understated if that Committee, and the Board of Governors as a whole, are to do their job effectively.³¹

In summary, the Commission views the changes to the composition of the Nominating and Audit Committees as a positive step to ensure that no one group will be able to dominate the governance of the Exchange. The Commission believes these Committees, as revised, should be more responsive to the best interests of the Exchange and its various constituencies, including the public, and thus are consistent with both the fair representation requirements of section 6(b)(3) of the Act and the protection of investors and the public interest pursuant to section 6(b)(5) of the Act.

The Commission also believes that the proposals to revise the duties of the MSE's senior officers and the process by which they are selected are consistent with the Act.³² Under these proposed rule changes, the President would have all the executive powers formerly exercised by the Chairman and would serve at the pleasure of the Board. As a result, responsibility for the MSE's business and regulatory affairs would no longer be diffused between two officers; instead the President, as CEO, would be the sole officer accountable for running the Exchange and would be directly accountable to the Board of Governors. At the same time, a Chairman chosen from among the elected Governors would no longer be part of management. Such a Chairman is more likely to have the autonomy and ability to meet his duty to conduct vigorous oversight of management performance.³³

The proposals also would increase management accountability to the membership. Along with the Chairman, the President would be required to make an annual report to Exchange members. These reports would be presented prior to the annual meeting (which, as noted above, would be moved to April). The Commission agrees with the MSE that these changes should strengthen communication among the membership, management and the Board and should give members the opportunity to review the annual reports before the next election of the Board of Governors.

The Commission is concerned, nevertheless, that the MSE's proposal to restrict the position of Vice Chairman to

³¹ See Securities Exchange Act Release No. 28936 (March 4, 1991), 56 FR 10449 (March 12, 1991) (File No. SR-BSE-90-19) (Order approving proposed rule change to revise the composition of the Boston Stock Exchange's Audit Committee).

³² See, *supra*, text accompanying notes 15-18.

³³ See, *infra*, text accompanying note 38.

²⁵ 15 U.S.C. 78f (1988).

²⁶ As to the Board, the Commission finds that the MSE's proposals comply with the requirements of

floor members could be inconsistent with the fair representation requirement of section 6(b)(3).³⁴ As a matter of policy, such a restriction may be undesirable because it raises the possibility that floor members could dominate the governance of the Exchange. If approved, "upstairs" members would be precluded from holding the only executive office the MSE guarantees to a member.³⁵ Conversely, the floor would always wield the committee appointment power, which, in turn, could lead to policies that favor the floor at the expense of the Exchange and its other constituencies.³⁶

In this case, however, the Commission believes that its concerns are counterbalanced by the proposals, taken as a whole, and, in particular, the substantial oversight authority vested in the MSE Board (particularly in light of the increased diversification of the Board which the Commission expects to result from the establishment of a newly "independent" Nominating Committee) and the limitations placed on the Vice Chairman's discretion to appoint committee members.³⁷ The Commission has therefore determined, for the reasons discussed below, to approve the proposal to restrict the position of Vice Chairman to floor members.

First, the overall structure of the MSE places significant checks and balances on the Vice Chairman's authority. At the outset, power to govern the Exchange would be divided among the Chairman and the President, in addition to the

Vice Chairman.³⁸ Unlike the Vice Chairman, the President, during his incumbency, could neither be a member of the Exchange nor affiliated in any way with a member organization. In addition, the Commission expects that the Board will not appoint a floor Governor to be Chairman. Although nothing in the MSE's Constitution or Rules explicitly precludes the Chairman of the MSE Board, as well as its Vice Chairman, from being aligned with the floor, such an outcome would seriously diminish the balance of power among Exchange constituencies and, thus, raise the specter of one MSE constituency dominating the Exchange contrary to the statutory directive in section 6(b)(3) regarding fair representation. Indeed, if the Board were to appoint a floor Governor as Chairman, the Commission would be likely to conclude that the MSE Constitution, as applied, is inconsistent with the fair representation requirements of section 6(b)(3), in addition to sections 6(b)(1) and 6(b)(5) of the Act, and would take whatever remedial action it deemed appropriate, pursuant to its authority under the Act.

Second, the Vice Chairman's most significant function is to appoint members to designated committees, and that function is circumscribed by Exchange guidelines and customs that the MSE's Vice Chairman and President-Designate have undertaken to uphold. Specifically, the MSE Constitution and Rules provide certain guidelines which the Vice Chairman must follow in appointing committee members. For example, a majority of the Governors appointed to the Audit Committee must not be active on the floor of the Exchange, and the Vice Chairman must choose a public Governor as Audit Committee Chairman. In appointing the Executive Committee, the MSE Constitution directs the Vice Chairman to assure the geographic diversity of the Governors appointed to that Committee.³⁹ Consistent with this directive, for the past four years, the Executive committee has consisted of two public Governors, two "upstairs" member Governors and two floor member Governors. The MSE has represented that the Exchange continues to support such diversity in the

Executive Committee and expects its future composition to be consistent with past practices.⁴⁰

Third, the ultimate check on the Vice Chairman's authority rests with the Board itself. For instance, the Vice Chairman's appointments are subject to Board approval, and the Board is authorized to remove the Vice Chairman for cause.⁴¹

Finally, the Board has a duty to monitor whether it is achieving its representation goals, including diversity of committee assignments as a result of the Vice Chairman's exercise of his powers. To this end, the MSE is establishing a new standing Committee on Organization and Governance. This Committee will be responsible for reviewing, on an ongoing basis, the Exchange's governance structure. The MSE has represented that this review will include an examination of whether its governance provisions, as applied, are consistent with the Act.⁴² In this regard, the Commission expects that the MSE Committee would look at the composition of the Executive Committee and other Exchange committees to check that they are not being dominated by any Exchange constituency, including floor members.

The Commission finds good cause for approving Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing thereof. Amendment No. 1 merely specifies with more detail the appropriate composition of the Exchange's Audit Committee. The functions and minimum number of members on this committee have not been changed. Moreover, the original proposals were published for the full statutory period and no comments were received on any aspect of the proposals, which involved significant changes to the MSE's governance and organization. Finally, good cause exists to accelerate approval of Amendment No. 1 because the change will ensure the Audit Committee is not dominated by any one

³⁴ The Commission previously has indicated that allowing a single constituency to dominate exchange governance may be inconsistent with the fair representation requirement of section 6(b)(3) of the Act. See Securities Exchange Act Release No. 22058 (May 21, 1985), 50 FR 23090 (File Nos. SR-CROE-84-15 and SR-CBOE-84-16) ("CBOE Order") (Order disapproving proposed rule change to increase the minimum number of floor directors on the Board of the Chicago Board Options Exchange ("CBOE") and order approving proposed rule change to provide for membership election of the CBOE's Executive Committee Chairman ("ECC"). Under the CBOE's rules, only a director who owns or directly controls his own membership would be eligible to seek the office; therefore, the person elected ECC would always be a floor member).

³⁵ It is possible, although by no means certain, that an "upstairs" member Governor could be appointed Chairman. By way of contract, the MSE requires the Vice Chairman to be a member. In addition, it is worth noting that this proposal only affects eligibility to be Vice Chairman. "Upstairs" members could still run for the Board of Governors.

³⁶ But see letter from George Simon, Attorney, Foley & Lardner to Brandon C. Becker, Deputy Director, Division of Market Regulation, SEC, dated November 16, 1992.

³⁷ In addition, the proposal would diminish the powers of the Vice Chairman. The Vice Chairman would no longer be an ex-officio member of any committee, nor would he have the power to call Board or Executive Committee meetings.

³⁸ The Commission approved the CBOE's ECC proposal because the Commission found that, among other things, the governance structure of the CBOE placed limitations on the ECC's authority and divided the power to govern the exchange among a number of exchange officers notably the Chairman and the President, in addition to the ECC. The Commission recognized that the division of functions and power on the CBOE was a system of checks and balances upon the ECC's authority. See CBOE Order, *supra*, note 34.

³⁹ See Art. V, Sec. 2 & 4 of the MSE Constitution.

⁴⁰ See MSE December 17 Letter, *supra*, note 22. The MSE has indicated that the seventh Governor member of the Executive Committee (created by the departure of the Vice Chairman) will be appointed ad hoc, depending on the strengths and weaknesses of individual Board members and the needs of the Exchange. Telephone conversation between J. Craig Long, Vice President, General Counsel and Secretary, MSE, and Beth Stekler, Staff Attorney, SEC, on December 18, 1992. Finally, it is worth noting that the Executive Committee wields most of the powers of the full board between Board meetings. As a result, floor domination of the Executive committee (like floor domination of the Board) may violate, in addition to sections 6(b)(1) and 6(b)(5) of the Act, Section 6(b)(3)'s requirement of fair representation.

⁴¹ See Art. III, Sec. 1 of the MSE Constitution.

⁴² *Id.*

group and is comprised of various exchange interests including the public.

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to Amendment No. 1 between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. 20549. Copies of such filing will also be available at the principal office of the MSE. All submissions should refer to File No. SR-MSE-92-13 and should be submitted by Jan 21, 1993.

V. Conclusion

For the reasons set forth above, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁴³ In particular, the Commission believes the proposal is consistent with sections 6(b)(1), 6(b)(3) and 6(b)(5) of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁴⁴ that the proposed rule changes, (SR-MSE-92-12 and SR-MSE-92-13) are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁴⁵

Jonathan G. Katz,

Secretary.

[FR Doc. 92-31644 Filed 12-29-92; 8:45 am]

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[Release No. 34-31636; File No. SR-MSE-92-15]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Midwest Stock Exchange, Inc., Regarding the Re-extension of the Waiver of Certain Exchange Transaction Fees for Transactions in Tape B Eligible Issues

December 22, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 2, 1992, the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The MSE proposes to re-extend the waiver of transaction fees, as set out in section (c) (Transaction Fee Schedule) of its Membership Dues and Fees, to transactions in Tape B eligible issues.¹ This waiver applies to firms sending orders in Tape B eligible issues to the Exchange floor. The Exchange waived these fees through December 31, 1992² and now proposes to extend this waiver through December 31, 1993.³ The

¹ The Consolidated Tape, operated by the Consolidated Tape Association ("CTA") compiles current last sale reports in certain listed securities from all exchanges and market makers trading such securities and disseminates these reports to vendors on a consolidated basis. The CTA is comprised of the New York, American, Boston, Cincinnati, Midwest, Pacific, and Philadelphia Stock Exchanges, as well as the Chicago Board Options Exchange and the National Association of Securities Dealers, Inc. Transactions in American Stock Exchange listed stocks, and qualifying regional listed stocks are reported on CTA Tape B. Securities Exchange Act Release No. 21583 (December 18, 1984), 50 FR 730 (January 7, 1985).

² See Securities Exchange Act Release No. 30154, (January 6, 1992), 57 FR 1291, (January 13, 1992) (approving File No. SR-MSE-91-17). Previously, the Exchange waived these fees for the time period February 7, 1991 through December 31, 1991 in Securities Exchange Act Release No. 28916, (February 25, 1991), 56 FR 9028, (March 4, 1991) (approving File No. SR-MSE-91-7). The MSE also waived these fees for the time period August 31 through December 31, 1990. See Securities Exchange Act Release No. 28402 (August 31, 1990), 55 FR 37389 (September 11, 1990) (approving File No. SR-MSE-90-14). The Commission did not receive any comments in connection with these filings.

³ The exact text of the proposed rule change was attached to the rule filing as Exhibit A and is available at the MSE and the Commission at the address noted in Item IV below.

Exchange will make the re-extension of the waiver of transaction fees effective upon filing with the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to continue the Exchange's efforts to attract additional order flow in Tape B eligible securities in order to enhance the Exchange's competitive position in these issues.

The proposed rule change is consistent with section 6(b)(4) of the Act in that the waiver of these fees does not effect the existing equitable allocation of fees and other charges among Exchange members using the Exchange's facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

⁴³ 15 U.S.C. 78s(b) (1988).

⁴⁴ 15 U.S.C. 78s(b)(2) (1988).

⁴⁵ 17 CFR 200.30-3(a)(12) (1991).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the MSE. All submissions should refer to File No. SR-MSE-92-15 and should be submitted by January 21, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

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[Release No. 34-31645; File No. SR-MSRB-92-06]

Self-Regulatory Organizations; the Municipal Securities Rulemaking Board; Order Approving a Proposed Rule Change Relating to Book-Entry Delivery of Municipal Securities Between Dealers

December 23, 1992.

On August 27, 1992, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("Commission") a proposed rule change concerning book-entry settlement of municipal securities between dealers. On November 13, 1992, notice of the proposed rule change was published in the Federal Register to solicit comment from interested persons.² The Commission did not receive any

comments.³ This order approves the proposed rule change.

I. Description

The proposed rule change will require most transactions between municipal securities dealers ("interdealer transactions") in securities that are eligible for book-entry settlement at a securities depository registered with the Commission under section 17A of the Act⁴ to be settled by book-entry through the facilities of a depository or through the interface between two depositories.⁵ Under the proposal, each party to such transactions will be required to submit to a depository all information and instructions required by the depository for book-entry settlement of the transaction to occur. The MSRB proposes that the rule change take effect on January 4, 1993.

Currently, Rule G-12(f) requires, among other things, that interdealer transactions be settled by book-entry if the securities are eligible for deposit at a depository of which both parties are members, or, if the parties are members of different depositories, the securities are eligible at each of the two depositories.⁶ Existing Rule G-12(f) effectively exempts from the requirement of book-entry settlement interdealer transactions in depository-eligible securities in which at least one of the parties to the transaction is not a

¹ In August 1991, the MSRB published the proposed rule change for comment as well as other draft amendments to Rules G-12(f) and G-15(d). Sixteen comment letters were received. Twelve commenters supported the draft amendments. These included four industry operations groups, one trade organization, six dealers, and one bank. Two commenters offered comments without stating a position on the draft amendments, and two commenters opposed the draft amendments. The concerns raised by the two commenters that opposed the draft amendments and the bases for their position are discussed in Section II, *infra*.

² The Depository Trust Company ("DTC"), the Midwest Securities Trust Company ("MSTC"), and the Philadelphia Depository Trust Company ("Philadep") are three securities depositories registered as clearing agencies with the Commission under section 17A that settle municipal securities in a book-entry environment. Securities Exchange Act Release No. 20221 (September 23, 1993), 48 FR 45167.

³ For example, MSTC and DTC have established a custodial interface so that an MSTC participant may deliver securities to a DTC participant, either for payment or free, without the actual physical securities ever leaving MSTC. Likewise, a DTC participant may make a similar book-entry movement to an MSTC participant. This can be accomplished because DTC and MSTC are custodians and hold securities on behalf of each other.

⁴ In addition, Rule G-12(f) requires an interdealer transaction to be settled by book-entry delivery when the transaction has been compared in an automated comparison system, and each party to the transaction, or its clearing agent for the transaction, is a member of a registered securities depository. MSRB Rule G-12(f)(ii).

depository member. Such transactions may be settled by physical delivery of securities certificates. The proposed rule change will eliminate this exemption by requiring book-entry settlement of interdealer transactions if the securities are eligible for book-entry settlement at a securities depository, or if the securities are made depository-eligible between trade date and settlement date.⁷

The proposal, however, will provide a narrow exception for municipal securities that are eligible at some, but not all, depositories. The exception will provide that if a party to a transaction has made arrangements, through its clearing agent or otherwise, to use one or more depositories exclusively, and the transaction is not eligible for book-entry settlement at all such depositories, such a transaction by that party will not be subject to the requirements of the proposed rule change. The exception is necessary to ensure that the proposed rule change is not construed to require dealers to establish relationships with more than one securities depository in order to comply with the proposed rule change.⁸

II. Discussion

The Commission believes the MSRB's proposal is consistent with sections 15B and 17A of the Act.⁹ Section 15B, among other things, requires that the MSRB's rules be designed to foster coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in, municipal securities.¹⁰ In section 17A, Congress called for the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions. While municipal securities are defined generally as exempted securities under the Act,¹¹ municipal securities are specifically included for purposes of section 17A of

⁷ There are programs underway at depositories to make bearer municipal securities automatically depository-eligible based on the trade data submitted to automated comparison and automated confirmation/affirmation systems. To the extent that these programs result in a security being made depository-eligible between trade date and settlement date, the proposed rule change will require book-entry settlement of transactions involving such securities. See Securities Exchange Act Release No. 31400 (November 4, 1992), 57 FR 53947.

⁸ In addition, the proposed rule change does not require a dealer to apply to make securities depository-eligible. Thus, an underwriter is not required to accomplish the initial distribution of the issue through a depository unless the underwriter chooses to do so by making the issue eligible at a depository prior to the distribution.

⁹ 15 U.S.C. 78o-4 and 78q-1.

¹⁰ 15 U.S.C. 78o-4(b)(2)(C).

¹¹ 15 U.S.C. 78c(a)(12)(A).

¹ 15 U.S.C. 78s(b)(1) (1988).

² Securities Exchange Act Release No. 31400 (November 4, 1992), 57 FR 53947.

the Act.¹² In addition, in section 17A(e), Congress directed the Commission to use its authority to end the physical movement of securities certificates in connection with the settlement among brokers and dealers of transactions in securities.¹³

The proposed rule change is part of the MSRB's continuing effort to integrate municipal securities transactions into an automated clearance and settlement system. The MSRB has sought to affect this transaction in stages. In 1983, the MSRB adopted Rule G-12(f).¹⁴ At that time, the MSRB stated that ultimately it intended to apply the Rule to all interdealer transactions in order for the municipal securities market to obtain the maximum benefits and efficiencies from the automated system.¹⁵ To allow some dealers and institutional customers additional time to adjust to the automated systems, the MSRB created an exemption in Rule G-12(f) that allowed interdealer transactions in depository-eligible securities to be accomplished with physical delivery of securities certificates if at least one of the parties to the transaction is not a depository member.

Since the adoption of Rule G-12(f), discussions concerning the Group of Thirty recommendations have focused attention on automated clearance and settlement,¹⁶ and the level of automation in the U.S. securities market has increased. In light of these developments, the MSRB believes that it is now appropriate to continue the implementation of amendments concerning the automated clearance and settlement of municipal securities. This proposal is the first phase of the MSRB's overall plan to complete the transition of the municipal securities market to automated techniques of clearance and settlement. Thus, the Commission believes that the proposal promotes the purposes of section 17A(e) by reducing

the physical movement of securities certificates in connection with the settlement among brokers and dealers of transactions in municipal securities.¹⁷

As noted earlier, two commenters opposed the proposal. One commenter stated that certain of its institutional customers wanted to continue receiving physical delivery of securities certificates on certain trades. The other commenter opposed the proposal because it preferred to receive physical delivery of securities certificates from another dealer when physical delivery of securities certificates must be made to customers (as might be the case when securities are purchased in the interdealer market to satisfy retail transactions). This dealer cited the cost and delay that may be associated with withdrawing securities certificates from a depository to make physical delivery to a customer as a reason for this view.

The MSRB believes that the great majority of interdealer transactions in depository-eligible securities already are being settled by book-entry and that there is relatively little use of the current exemption within Rule G-12(f).¹⁸ To the extent that a small number of such transactions are being settled with physical certificates, the MSRB believes that the proposed rule change will facilitate the clearance and settlement of such transactions by reducing the exemption processing and delays associated with physical delivery against payment. The MSRB believes that the proposed rule change generally will reduce the cost of clearance and settlement in the industry by allowing dealers to discontinue such exception processing and rely to a greater extent on book-entry settlement.

The Commission recognizes that withdrawing securities from a depository for physical delivery may impose some additional costs and delays on dealers. Nevertheless, the Commission believes that the benefits of the proposal outweigh any inconvenience to the dealers. Physical delivery of securities certificates is inefficient and costly and poses the potential risk to the industry that securities certificates will be lost or interest payments will be misdirected.¹⁹

Thus, the Commission agrees with the MSRB that the proposed rule change, by eliminating this practice of street-side settlement, by eliminating this practice for street-side settlement, will reduce the cost of clearance and settlement in the industry by allowing dealers to discontinue exception processing and rely to a greater extent on book-entry settlement.

The Commission believes the proposed rule change is consistent with the objectives of Sections 15B and 17A because it will help reduce the cost and inefficiency associated with the physical clearance and settlement of municipal securities transactions by further incorporating municipal securities into the national system for the prompt and accurate clearance and settlement of transactions in securities.²⁰ Inclusion of municipal securities transactions in an automated clearance and settlement system may be essential to the settlement of municipal securities transactions in three business days instead of five business days. Thus, the Commission applauds the MSRB's efforts to move municipal securities into a book-entry environment.

III. Conclusion.

For the reasons stated above, the Commission finds that the proposed rule change is consistent with sections 15B and 17A of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,²¹ that the proposed rule change (File No. SR-MSRB-92-06) be, and hereby is, approved. Consistent with the MSRB's request, the proposal will take effect on January 4, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²²

Jonathan G. Katz,
Secretary.

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events for the escheat of unclaimed personal intangible property.

²⁰ The MSRB has represented that it intends to file, within the next eighteen months, proposed rule changes with the Commission relating to book-entry settlement of delivery versus payment and receipt versus payment ("DVP/RVP") customer transactions; automated comparison of interdealer transactions; and automated confirmation and affirmation of DVP/RVP customer transactions.

²¹ 15 U.S.C. 78a(b)(2).

²² 17 CFR 200.30(a)(12).

¹² 15 U.S.C. 78c(a)(12)(B)(i).

¹³ 15 U.S.C. 78q-1(e).

¹⁴ The adoption of Rule G-12(f) followed the passage of the Tax Equity and Fiscal Responsibility Act ("TEFRA") in 1982. Pub. L. 97-248, section 310(b), 96 Stat. 324, 595-600 (1982). TEFRA eliminated the exemption from U.S. income tax for non-registered form (bearer) municipal securities over one year in maturity issued after July 1, 1983. This change effectively eliminated the practice of issuing long-term municipal securities in bearer form, which was an obstacle to making municipal securities eligible for depository processing. As a result of TEFRA, virtually all such municipal securities are in registered form.

¹⁵ Automated Clearance and Settlement in the Municipal Securities Market, A Report to the Securities and Exchange Commission (March 31, 1988).

¹⁶ The Group of Thirty's recommendations are discussed in Clearance and Settlement Systems in the World's Securities Markets (March 1989).

¹⁷ 15 U.S.C. 78q-1(e).

¹⁸ The MSRB stated that it is unaware of any dealer who does not have access to the book-entry settlement services of a securities depository, either directly or through a clearing agent. See Securities Exchange Act Release No. 31400 (November 4, 1992), 57 FR 53947.

¹⁹ See *State of Delaware v. State of New York*, No. 111, Report of the Special Master (U.S. Supreme Court, October term, 1991) ("Report"). The Report discusses the processing difficulties that may lead to lost securities certificates and misdirected interest payments, and the implication of such

[Release No 34-31634; File No. SR-NYSE-88-35]

Self-Regulatory Organizations; Replication of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Extensions of Time for Payment or Delivery of Securities

December 22, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 16, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is republishing this notice to solicit comments on the proposed rule change from interested parties.

The proposed rule change was published in Securities Exchange Act Release No. 26341 (December 5, 1988), 53 FR 49808 (December 9, 1988). The Commission received 15 comment letters¹ as well as a letter from the

NYSE responding to the comment letters.²

The Commission has determined to republish the notice for comment because of the significant period of time that has lapsed since the proposal was initially published in the Federal Register and because of the number of comment letters that were received concerning the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing a new rule that would require all member organizations for which the Exchange has been appointed the designated examining authority ("DEA") by the Commission pursuant to Rule 17d-1 under the Act³ to submit requests for extensions of time for payment or delivery of securities to the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Authority to grant extensions of time on payment for purchases and delivery on sales of securities is given to a registered national securities exchange or a registered national securities association under Regulation T⁴ of the Federal Reserve Board ("FRB") and Rule 15c3-3(n)⁵ under the Act when the self-regulatory organization ("SRO") is satisfied that a creditor

(broker/dealer) is acting in good faith in making such a request and when, according to the creditor, exceptional circumstances warrant such action.

Proposed new Rule 434 would require all member organizations for which the Exchange has been appointed the DEA by the Commission pursuant to Rule 17d-1 under the Act to submit requests for extensions of time for payment or delivery of securities to the Exchange.

Since no FRB or Commission standards for extension requests exist, each SRO that processes extension requests (other SROs include the American, Cincinnati, Midwest, Pacific and Philadelphia Stock Exchanges as well as the Chicago Board Options Exchange and the National Association of Securities Dealers)⁶ has its own parameters and procedures for evaluating, granting, and controlling extension requests. As a result, acceptable reasons, number of extensions permitted, special limitations and restrictions on customers are not uniformly applied and in some cases, possibly, not applied at all. Therefore, broker/dealers can apply for extensions from several or all SROs to circumvent any special requirements or the maximum number of extensions allowed by another SRO (i.e., while the NYSE restricts customers to 5 extensions in 12 months, the NYSE understands that some SROs allow more extensions or have no limitations).

The Exchange has devoted considerable effort and expense to develop a computerized extension processing system which provides significant regulatory information to member organizations, the Exchange and industry regulators. The Exchange system contains specific criteria regarding acceptable reasons, number of days permitted per extension and limits on number of extensions permitted per code and in total. These criteria facilitate the prompt collection of monies and securities due and reduce exposure to losses for both customers and member organizations. The Exchange system generates daily and monthly reports which provide member organizations and Exchange staff a means to monitor the incidence and reasons for the extension, potential abuses, compliance with appropriate regulations and indications of possible operational problems.

⁶ At the time that the NYSE filed the proposed rule change, the Boston, Cincinnati, Midwest, Pacific and Philadelphia Stock Exchanges and the National Association of Securities Dealers processed Regulation T extension requests. See Securities Exchange Act Release No. 26341 (December 5, 1988), 53 FR 49808 (December 9, 1988).

Regulation, Division of Market Regulation, Commission, dated July 5, 1989.

² See letter from James E. Buck, Senior Vice President and Secretary, New York Stock Exchange, to Mary Revell, Branch Chief, Exchange Regulation, Division of Market Regulation, Commission, dated May 31, 1989 (responding to comment letters by the Cincinnati Stock Exchange, Midwest Stock Exchange, Pacific Stock Exchange, Bartlett & Company, Gradison & Company, Incorporated and Securities Settlement Corporation).

³ 17 CFR 240.17d-1 (1991).

⁴ 12 CFR 220.4(c) and 220.8(d) (1991).

⁵ 17 CFR 240.15c3-3 (1991).

¹ See letters from Richard E. Orie, Vice President—Director of Compliance, Q & R Clearing Corporation, to Mary Revell, Branch Chief, Exchange Regulation, Division of Market Regulation, Commission, dated December 21, 1988; J. Craig Long, Vice President, General Counsel and Secretary, Midwest Stock Exchange, to Jonathan Katz, Secretary, Commission, dated December 23, 1988; David Colker, Vice President, Market Regulation and General Counsel, Cincinnati Stock Exchange, to Jonathan Katz, Secretary, Commission, dated December 28, 1988; Donald E. Weston, Chairman, Gradison & Company, Incorporated, to Jonathan Katz, Secretary, Commission, dated January 11, 1989; Bernard L. Finger, Senior Vice President, Compliance Director, Securities Settlement Corporation, to Secretary, Commission, dated January 18, 1989; John F. Carsley, First of Michigan Corporation, to Jonathan Katz, Secretary, Commission, dated January 23, 1989; Gerald L. Oaks, Chief Financial Officer, Bartlett & Co., to Jonathan Katz, Secretary, Commission, dated January 30, 1989; David Colker, Vice President, Market Regulation and General Counsel, Cincinnati Stock Exchange, to Jonathan Katz, Secretary, Commission, dated January 31, 1989; David P. Senak, Vice President—Regulation, Pacific Stock Exchange, to Jonathan Katz, Secretary, Commission, dated January 31, 1989; Richard T. Chase, Philadelphia Stock Exchange, to Jonathan Katz, Secretary, Commission, dated February 1, 1989; J. Craig Long, Vice President, General Counsel and Secretary, Midwest Stock Exchange, to Jonathan Katz, Secretary, Commission, dated February 1, 1989; Laura Homer, Securities Credit Officer, Board of Governors of the Federal Reserve System, to Howard Kramer, Assistant Director, Exchange and Options Regulation, Division of Market Regulation, Commission, dated March 8, 1989; John E. Pinto, Executive Vice President, Compliance, National Association of Securities Dealers, to Jonathan Katz, Secretary, Commission, dated March 22, 1989; John Caffrey, Chairman of the Board, Financial Clearing & Services Corporation, to Secretary of the Commission, dated March 27, 1989; David Colker, Vice President Market Regulation and General Counsel, Cincinnati Stock Exchange, to Howard Kramer, Assistant Director, Exchange and Options

The Exchange has been designated by the Commission as the DEA for almost all of its members. This designation places sole responsibility upon the Exchange for examining its members for compliance with industry financial responsibility rules. Other SROs of which these broker/dealers are members are statutorily relieved of all such responsibilities. Therefore, the Exchange is the only SRO in a position to monitor and effectively impose restrictions on the extension of credit by its members. This is an essential regulatory function that can affect the financial viability of a firm.

In the NYSE's view, requiring firms to file all extension requests with their DEAs would:

- Facilitate monitoring for compliance with appropriate regulations based upon review of all extensions requested by a particular firm.

- Allow credit related financial restrictions placed upon a member firm to be made based upon complete information comprising all extensions requested.

- Enhance operational surveillance, e.g., excessive extension requests can be an early indication of back office problems.

- Ensure uniform application of standards to all customers of NYSE firms and uniform application of the extension of credit provisions of Federal Reserve Board Regulation T and SEC Rule 15c3-3(n).

- Provide a valuable surveillance tool in detecting manipulation and other illegal trading activities.

- Provide the ability to detect possible sales practice problems.

(b) The NYSE believes the proposed rule change is consistent with the requirements of Rule 17d-1 under the Act in that the Exchange has been designated as having responsibility for examining its members for compliance with applicable financial responsibility rules such as Regulation T of the FRB and Rule 15c3-3 under the Act. It is also consistent with section 7(a) of the Act in that it is designed to prevent the excessive use of credit for the purchase or carrying of securities and supports the purposes of Regulation T of the FRB.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will have an impact on competition in that other SROs will no longer receive revenue from processing extension requests from broker/dealers which are dual members for which the Exchange has been appointed DEA. The Exchange does not believe that such impact will result in

a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As DEA for most of its members, the Exchange is the only SRO charged with the duty to oversee compliance by these broker/dealers with financial responsibility rules. The Exchange believes that information gathered in processing extension requests is essential in carrying out its statutory oversight responsibilities.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE-88-35 and should be submitted by January 21, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 92-31744 Filed 12-29-92; 8:45 am]

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[Release No. 34-31632; File No. SR-NYSE-92-24]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving proposed Rule Change Relating to Amendments to Warrants Listing Standards in Para. 703.12 of the NYSE Listed Company Manual

December 22, 1992.

On September 18, 1992, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend the warrants listing standards in Paragraph 703.12 of the NYSE Listed Company Manual.

The proposed rule change was published for comment in Securities Exchange Act Release No. 31421 (November 9, 1992), 57 FR 54130 (November 16, 1992). No comments were received on the proposal.

Paragraph 703.12, which governs the NYSE's warrant listing standards, currently requires that each warrant listed on the Exchange represent the right to purchase at least one share of the common stock of a company whose common stock is already listed on the NYSE or will be listed there concurrently with that company's warrants. The standards require that an issuer have 1,000,000 warrants outstanding and at least 400 holders of warrants.³ The standards specify that warrants should have a minimum life of one year, and an aggregate market value of at least \$4 million. The present standard also cap the warrants' exercise price: That price cannot be more than 25% above the market price of the underlying common stock at the time the warrants are issued. As an alternative, a current premium of less than 25% over the average price of common stock for a 3 month period may be applied. Finally, Paragraph 703.12

¹ 15 U.S.C. 78s(b)(1) (1988).

² 17 CFR 240.19b-4 (1991).

³ See letter from James E. Buck, Senior Vice President and Secretary, NYSE to Diana Luka-Hopson, Branch Chief, Commission, dated December 8, 1992, which clarified the NYSE's current warrants listing standards.

prohibits more than 50% of a company's equity from being in warrant form.

The Exchange proposes to amend Paragraph 703.12 to permit the listing of warrants representing the right to buy any security, not just common stock. Paragraph 703.12, however, would continue to require that the underlying security be listed, previously or concurrently, on the NYSE. The proposed rule change would also allow a company to issue warrants for more, or less, than one share of its securities. Amended paragraph 703.12 would specify that if warrants are exercisable into listed common stock, the listing of the warrants and the underlying common stock is subject to the NYSE's shareholder approval policy.⁴

The Exchange also proposes to delete the strict numerical criteria limiting the warrants' exercise price and their proportion of total equity. Nevertheless, as amended, Paragraph 703.12 would still require that the NYSE consider these factors, including the relationship between the exercise price of the warrants and the price of the underlying security at the time of issuance; and the proportion of the issuer's total equity that all issues of warrants represent, in determining eligibility for listing.

The NYSE believes that the proposed amendments will provide the Exchange with greater flexibility to consider the eligibility for listing new warrant issues. The NYSE states that the proposed rule change is consistent with section 6(b)(5) of the Act which requires exchange rules to be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6(b)(5) of the Act.⁵ In particular, the Commission believes the proposal is consistent with the section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing

information with respect to and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission believes that Paragraph 703.12, as amended, should give the NYSE the flexibility it needs to adapt to today's rapidly changing marketplace. In recent years, exchanges have diversified far beyond their traditional base of common stock. Allowing warrants to be issued on other securities will give the NYSE greater flexibility.⁶ Its willingness to list warrants to buy fractional shares also recognizes and encourages innovation.⁷ Finally, deleting the absolute quantitative standards for the warrants' exercise price should enable the NYSE to make listing decisions based on the unique characteristics of each company's warrants.

The Commission also believes that the remaining quantitative standards and qualitative standards should ensure that only substantial companies capable of meeting their financial obligations are eligible to have their warrants listed on the Exchange. The criteria affected by the proposed rule change represent just one part of the overall regulatory framework. Securities underlying the warrants must, as before, be listed on the NYSE. In addition, in order to list the warrants, they must meet the warrants listing standards. These requirements help ensure the quality of the issuer⁸ and the adequate distribution of its securities.⁹ Moreover, the NYSE will still consider certain factors, such as the warrants' exercise

⁴ The Commission notes, however, that this rule filing does not address the regulatory structure for trading index warrants. The NYSE currently has a rule proposal pending with the Commission concerning the trading of index warrants. See File No. SR-NYSE-92-17. In addition, the Commission, on a case-by-case basis, may decide that warrants on certain types of securities, depending on how they are structured, may have to comply with certain customer protection rules.

⁵ The American Stock Exchange ("Amex") warrant listing standards are similar to those proposed by the NYSE. The Amex standards permit warrants to be issued on common stock or other securities listed on the Amex or NYSE. Amex's rule also places no restriction on the conversion ratio. See sec. 105 of the Amex Company Guide.

⁶ The general listing criteria of Para. 102 of the NYSE Listed Company Manual most directly measure the quality of the issuer. Para. 102 provides minimum numerical standards that a company must meet in order to have its securities listed on the NYSE. These include the size and earning power of the company, the market for its securities, etc.

⁷ For example, as noted above, Para. 703.12 establishes floors for the number of warrants outstanding and the number of holders of those warrants.

price and their proportion of total equity, in the listing decision, but the absolute quantitative standards will be deleted. This should provide the NYSE with greater flexibility in listing new warrant issues without compromising investor benefits and protections.¹⁰

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹¹ that the proposed rule change (SR-NYSE-92-24) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Jonathan G. Katz,
Secretary.

[FR Doc. 92-31646 Filed 12-29-92; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-31631; File Nos. SR-OCC-92-21 and SR-ICC-92-04]

Self-Regulatory Organizations; The Options Clearing Corp., and The Intermarket Clearing Corp.; Order Approving Proposed Rule Changes Relating to the Calculation of Additional Margin

December 22, 1992.

On August 5, 1992, The Options Clearing Corporation ("OCC") and The Intermarket Clearing Corporation ("ICC") filed proposed rule changes (File Nos. SR-OCC-92-21 and SR-ICC-92-04) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").¹ Notice of the proposal was published in the Federal Register on October 30, 1992, to solicit comments from interested persons.² On December 7, 1992, OCC and ICC each filed an Amendment No. 1 to their proposal.³ No comments were received. This order approved the proposals.

I. Description of the Proposal

The purpose of the proposals is to modify the calculation of additional margin by OCC's and ICC's margin systems, the Theoretical Intermarket Margin System ("TIMS"). The proposed rule changes would amend portions of OCC's Rules 601 and 602 and ICC's Margin Resolution to accomplish this purpose.

¹⁰ By way of comparison, Amex does not explicitly include these as factors to be considered in its warrants listing process. See, *supra*, note 6.

¹¹ 15 U.S.C. 78s(b)(2) (1988).

¹² 17 CFR 200.30-3(a)(12) (1991).

¹³ 15 U.S.C. 78s(b)(1) (1988).

² Securities Exchange Act Release No. 31357 (October 26, 1992), 57 FR 49202.

³ The amendments corrected typographical errors and were nonsubstantive in nature.

⁴ See Paragraph 312.00 of NYSE Listed Company Manual.

⁵ 15 U.S.C. 78f(b) (1988).

A. Background

OCC and ICC (sometimes collectively referred to in this order as the "Clearing Corporations") require Clearing Members to adjust their margin deposits with the Clearing Corporations by 9:00 a.m. of every business day based on calculations performed the previous night by OCC and ICC using TIMS methodology.⁴ The Clearing Corporations impose a margin requirement on the net short positions in each Clearing Member account and give margin credits for unsegregated long positions. Under TIMS, the margin requirement or credit for a net option series position in a class group⁵ that is itself a product group⁶ in a given Clearing Member account is equal to the premium margin⁷ increased in the case of a negative liquidating value of decreased in the case of a positive liquidating value by the additional margin amount for that class group. Similarly, the margin requirement or credit for a product group comprised of two or more class groups is equal to the algebraic sum of the premium margin requirements and credits for the class groups in the product group increased in the case of a negative liquidating value or decreased in the case of a positive liquidating value by the additional margin amount for the class groups in the product group.

The additional margin for a class group is essentially the amount of margin that would protect the Clearing Corporations from loss in the event of a move in either direction in the market value of the underlying interest by an amount up to or equal to the margin

interval.⁸ The additional margin for a product group is essentially an amount that, given the price correlation between the interests underlying the class groups in the product group, is calculated to protect the Clearing Corporations from loss in the event of the likely combinations of moves in the market values of the underlying interests by an amount up to or equal to their respective margin intervals.

TIMS calculates additional margin amounts by utilizing options pricing theory to calculate theoretical liquidating values for the net series options positions in each class group. The theoretical liquidating values are calculated by assuming a change in the market value of the underlying interest within the interval between the previous day's closing market price of the underlying interest plus the margin interval ("upside price") and the previous day's closing market price minus the margin interval ("downside price"). In addition to the upside price and the downside price, theoretical liquidating values are calculated at intermediate points within the interval because some combinations of positions can have greater net theoretical liquidating values at an intermediate point than at either of the end points of the interval.

B. The Current TIMS Additional Margin Methodology⁹

For a product group comprised of only one class group, TIMS currently calculates additional margins as follows. Theoretical liquidating values for the class group are calculated: (1) For an upside price, (2) for a downside price, and (3) at each intermediate point between the upside price and the downside price that is equal to an exercise price for any of the series in the

class group.¹⁰ The variation between each of these liquidating values and the applicable premium margin requirement or credit is determined. The largest variation, whether representing a margin credit or requirement, in the event of a rise in the market value of the underlying interest ("upside variation") and the largest variation, whether representing a margin credit or requirement, in the event of a decline in the market value of the underlying interest ("downside variation") are identified. The additional margin requirement is equal to whichever of the upside variation, the downside variation, or the alternative minimum additional margin requirement represents the largest margin requirement.¹¹

For a product group comprised of two or more class groups, TIMS currently calculates additional margin as follows. Any class group upside variation or downside variation that represents a margin credit is reduced by a percentage specified by the Clearing Corporations.¹² The upside variations in the product group are added together to produce a net upside variation and the downside variations in the product group are added together to produce a net downside variation. The additional margin requirement is equal to whichever of the net upside variation, the net downside variation, or the alternate minimum additional margin requirement represents the largest margin requirement.

¹⁰ The current TIMS system uses actual, exchange-listed exercise prices, as distinct from OCC-generated theoretical exercise prices, for the intermediate points on the margin interval. Telephone conversation between James C. Yong, Deputy General Counsel, OCC, and Thomas C. Etter, Jr., Attorney, Division of Market Regulation ("Division"), Commission (December 17, 1992).

¹¹ The alternative minimum additional margin requirement essentially assures that TIMS requires a minimum amount of additional margin even in situations as where accounts are fully hedged (i.e., accounts in which the value of the unsegregated long positions equals or exceeds the value of the short positions). The alternative minimum additional margin calculation is described in Securities Exchange Act Release No. 29990 (November 26, 1991), 56 FR 61455 [File Nos. SR-OCC-91-18 and SR-ICC-91-01] (order approving proposed rule changes which provide for an alternative minimum additional margin requirement). The two rule changes that are the subject of this order do not propose any change in the alternative minimum additional margin calculation.

¹² This percentage is determined on the basis of studies of the price correlations of the underlying interests in the product group. For example, OCC currently has established the percentage for the stock option product group at 70% and has established percentages that range from 5% to 30% for the various non-equity option product groups.

⁴ OCC Rule 605 and ICC Rule 503.

⁵ For purposes of OCC Rules 601 and 602, a "class group" consists of all put and call options having the same underlying interest. In the case of OCC Rule 602, a class group also includes commodity options and futures which are subject to margin at OCC because of a cross-margining program with a Participating Commodities Clearing Organization. Upon the Commission's approval of File No. SR-OCC-91-05, a class group will include Index Participations having the same underlying interest [for notice of that filing, see Securities Exchange Act Release No. 29081 (April 21, 1991), 56 FR 16142]. In the case of the ICC Board Resolution describing the calculation of margin, a class group consists of, in addition to put and call securities options having the same underlying interest (which are subject to margin at ICC because of ICC's cross-margining program with OCC), commodity options and futures relating to the same underlying interest.

⁶ A "product group" consists of all class groups having underlying interests that the Clearing Corporations have determined exhibit price correlation sufficient to warrant margining on a combined basis.

⁷ The term "premium margin" means the liquidating value of the positions based upon premium levels at the close of trading on the preceding trading day.

⁸ A "margin interval" is the maximum one-day price movement against which the Clearing Corporations desire to protect. It is determined for each underlying interest based on an analysis of the volatility in the market for the underlying interest.

⁹ The description of the additional margin calculation in this proposed rule change does not include a description of the short option adjustment. The short option adjustment is essentially a refinement of the additional margin calculation which is intended to assure that TIMS requires a minimum amount of additional margin with respect to certain net short positions in deep out-of-the-money options. OCC and ICC both have proposed to modify the short option adjustment as set forth in File No. SR-OCC-91-12 [for notice of filing, see Securities Exchange Act Release No. 29445 (July 17, 1991), 56 FR 34083] and in File No. SR-ICC-92-03 [for notice of filing, see Securities Exchange Act Release No. 31181 (September 14, 1992), 57 FR 43759] both of which are currently pending before the Commission. The two rule changes that are the subject of this notice do not propose to change the method of calculating the short option adjustment.

C. The Revised TIMS Additional Margin Methodology¹³

Internal reviews of TIMS have led the Clearing Corporations to conclude that TIMS will generate additional margin requirements that more accurately reflect the risk to each Clearing Corporation presented by the positions in a product group in an account if the variations relating to all intermediate points between the upside price and the downside price in the class group or groups in the product group are taken into account in making the product group additional margin calculation. As described above, the current TIMS additional margin methodology uses only the upside variation and the downside variation (*i.e.*, for each class group, only the largest of the variations in the event of a rise or a decline in the market value of the interest underlying the class group) in making the product group additional margin calculation. It is therefore possible that the upside variation for one class group in the product group may correspond to the upside price for that class group while the upside variation for another class group in the product group may correspond to an intermediate point between the upside price and the market value of the underlying interest. In combining these two upside variations to generate a net upside variation for the product group, the current TIMS methodology is implicitly assuming that these market moves in the two class groups are likely to occur simultaneously. However, given the fact that the class groups within the product group exhibit price correlation, it is unlikely that the upside variation for one class group will correspond to the upside price for that class group while at the same time the upside variation for another class group will correspond to an intermediate point between the upside price and the market value of the underlying interest.

Additional margin calculations which combine upside variations or downside variations resulting from points other than the upside or downside prices of the respective class groups do not occur

frequently¹⁴ because the upside variations and downside variations in most class groups generally correspond to their respective upside prices and downside prices. When such a situation does occur, however, the resulting additional margin amount for the product group as a whole may either overestimate or underestimate the risk presented by the positions in the product group.¹⁵ For example, if the additional margin requirements for each of two class groups results from the class groups' upside variations and if the two variations relate to different points in their respective margin intervals, adding the two requirements will produce an overestimated additional margin requirement for the product group because both requirements are unlikely to occur simultaneously. Similarly, if one class group has an additional margin requirement resulting from its upside variation and another has an additional margin credit resulting from its upside variation and if the two upside variations relate to different points in their respective margin intervals, offsetting the requirement and the credit will produce an underestimated additional margin amount for the product group because the requirement and the credit are unlikely to occur simultaneously.

The proposed changes to OCC Rules 601 and 602 and to the ICC Margin Resolution would minimize the likelihood of such misestimations by using the variations relating to all intermediate points between the upside price and the downside price in each class group in making product group additional margin calculations. Instead of using the exercise prices of all series in each class group as the intermediate points for additional margin calculation purposes, the interval between the upside price and the downside price for each class group would be divided into a fixed number of subintervals, and the points between the subintervals would be used as the intermediate points.¹⁶ As

a result, all class groups in a product group would have an equal number of intermediate points. The variations for each set of corresponding points would be algebraically added together to generate a set of ten net variations for the equity option product group and twenty net variations for the non-equity option product groups.¹⁷ The additional margin requirement for a product group would be the largest of any of the net variations representing a margin requirement or the alternative additional margin requirement.

II. Discussion

The Commission believes that the proposals are consistent with the Act and particularly with section 17A of the Act.¹⁸ Sections 17A(b)(3) (A) and (F) of the Act provide that a clearing agency and its rules must be designed to assure the safeguarding of securities and funds in its custody or control or for which it is responsible.¹⁹ Those sections also require that a clearing agency and its rules be designed to facilitate the prompt and accurate clearance and settlement of securities transactions and to protect investors and the public interest. As discussed below, the Commission believes that the proposals enhance the Clearing Corporations' ability to meet their statutory obligations with respect to their automated margin systems.

Internal reviews of TIMS have led the Clearing Corporations to conclude that the risks presented by the positions in a clearing member's account can be more accurately measured if more intermediate points between the upside price and the downside price in each class group are taken into consideration in making the additional margin

additional margin requirement or credit. Additional margin calculations for equity options are currently performed using an average of four intermediate points that represent two upside and two downside exercise prices. Similarly, OCC Rule 602 would divide the interval between the upside price and the downside price for non-equity options into twenty subintervals. This would result in eighteen intermediate points, the upside price, and the downside price being used for additional margin calculation purposes. Additional margin calculations for non-equity options are currently performed using an average of ten intermediate points that represent five upside and five downside exercise prices. ICC's Margin Resolution also would divide the interval between the upside price and the downside price for options into twenty subintervals resulting in eighteen intermediate points, the upside price, and the downside price being used for additional margin calculation purposes.

¹⁷ Variations representing margin credits are reduced in the same way that margin credits from upside variations and downside variations are currently reduced. See footnote 11 and accompanying text.

¹⁸ 15 U.S.C. 78q-1 (1988).

¹⁹ 15 U.S.C. 78q-1(b)(3) (A) and (F) (1988).

¹³ OCC and ICC have each represented to the Commission that the proposed modifications to the TIMS methodology will never result in an additional margin calculation that is less than the additional margin amount currently being calculated by TIMS. Letters from James C. Yong, Deputy General Counsel, OCC, to Jerry W. Carpenter, Branch Chief, Division, Commission (December 21, 1992) and from James C. Yong, Deputy General Counsel, ICC, to Jerry W. Carpenter, Branch Chief, Division, Commission (December 21, 1992).

¹⁴ OCC has represented that such additional margin calculations occur in less than 5% of all additional margin calculations.

¹⁵ As previously stated, the Clearing Corporations have represented to the Commission that their effort to minimize the likelihood of such misestimations of the risk presented will never result in an additional margin calculation that is less than the additional margin amount currently being calculated by TIMS. *Supra*, note 13.

¹⁶ OCC Rule 601 would divide the interval between the upside price and the downside price for equity options into ten subintervals. This would result in eight intermediate points, the upside price, and the downside price being used for additional margin calculation purposes. The centerpoint, representing no movement in the market price of the underlying interest, would never generate an

calculation for the product group. Accordingly, the Clearing Corporations believe that the proposals will generate "additional margin" requirements that will more accurately reflect the "true risk" to each Clearing Corporation.

These proposals are designed to fine tune the existing TMS margin system, rather than make major modifications which would result in significant changes in the amount of clearing margin posted by members. In fact, OCC has assured the Commission that with respect to clearing margin, both on an aggregate basis and on a member-by-member basis, these proposed modifications to the existing margin system will: (1) In most cases cause no changes in margin levels and (2) in those cases where changes occur, it will generally cause an increase in margin requirements reflecting potential exposure to OCC that will now be addressed.

In view of the foregoing, the Commission believes that by modifying TMS to increase the numbers of intermediate points used in the calculation of additional margin, these proposals provide each Clearing Corporation with a more accurate measure of the clearing margin needed to cover the calculated levels of risks and ultimately the risk of member default. Therefore, the proposals are consistent with the Clearing Corporations' statutory obligations under section 17A.

III. Conclusion

For the reasons discussed above, the Commission believes that the proposals are consistent with the requirements of the Act, particularly with section 17A of the Act, and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,²⁰ that the proposed rule changes (File Nos. SR-OCC-92-21 and SR-ICC-92-04) be, and hereby are, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.²¹

Jonathan G. Katz,
Secretary.

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[Release No. 34-31635; File No. SR-PSE-92-36]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to an Extension of the Exchange's Lead Market System Pilot Program

December 22, 1992.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on October 28, 1992, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to extend its Lead Market Maker ("LMM") System pilot program through September 30, 1993. The Exchange's LMM System supplements the standard PSE options trading pit by establishing LMMs for certain options classes. The Exchange has proposed amendments to its LMM system is several separate filings;² however, the Commission at this time only is considering an extension of the existing LMM system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

¹ 15 U.S.C. 78s(b)(1) (1982).

² See Securities Exchange Act Release No. 29055 (April 5, 1991), 56 FR 14959 (File No. SR-PSE-91-08); SR-PSE-91-08, Amendment No. 1. See also SR-PSE-92-35.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On January 17, 1990, the Commission approved, on a pilot basis, a PSE proposal to establish an LMM system in order to enhance the ability of the Exchange to compete in a multiple trading environment.³ The Exchange's LMM system is designed primarily for new options classes and options classes with comparatively low volume. Under the existing pilot program, members appointed as LMMs assume responsibilities and acquire rights in their appointed options classes beyond the obligations and rights of market makers that trade in the same options class. In addition to the normal obligations of a market maker, the LMM must assume additional obligations designed to strengthen the market making in the designated options class. The LMM, among other things, is responsible for ensuring the accurate dissemination of market quotations, determining the algorithm for the PSE's Auto-Quote System, assuring that each market quotation is honored consistent with minimum obligations established by Exchange rules, and must participate in applicable automatic execution systems. Moreover, an LMM must be present at the trading post for his LMM-designated options class throughout every trading day.⁴

The Commission initially approved the LMM pilot program to continue for eighteen months to July 31, 1991.⁵ Thereafter, the Commission granted two extensions to the pilot program: One for one year; to July 31, 1992;⁶ the other for three months, to October 31, 1992.⁷ The Exchange now seeks an additional extension of the pilot program to September 30, 1993.

The Exchange requests the proposed extension for the following reasons. First, the Exchange has submitted to the Commission a separate rule filing that would amend PSE Rule 6.82, governing the LMM system.⁸ At the present time, additional rule filings pertaining to the LMM system are pending Commission approval.⁹ Therefore, the Exchange

³ See Securities Exchange Act Release No. 27631 (January 17, 1990), 55 FR 2462.

⁴ See Securities Exchange Act Release No. 27631 (January 17, 1990), 55 FR 2462 (approving SR-PSE-91-22).

⁵ See Securities Exchange Act Release No. 29475 (July 23, 1991), 56 FR 36183 (approving SR-PSE-91-22).

⁶ See Securities Exchange Act Release No. 31063 (August 21, 1992), 57 FR 39255 (approving SR-PSE-92-27).

⁷ See note 2, *supra*.

⁸ *Id.*

²⁰ 15 U.S.C. 78s(b) (1988).

²¹ 17 CFR 200.30-3(a)(12) (1991).

requests the extension in order to evaluate the system in light of the pending rule filings, if approved. Second, the Commission approved, in June 1992, a PSE proposal to restructure certain options committees of the Exchange. Under the proposal, the LMM Appointment Committee was abolished and its former responsibilities were assumed by the Options Allocation Committee and the Options Appointment Committee. The Exchange also seeks the extension to evaluate and refine this restructuring.

The PSE believes, based on the pilot's performance, that the LMM system is viable and effective and that an uninterrupted continuation of the pilot program is warranted based on the importance of maintaining the quality and efficiency of the Exchange's markets. The Exchange, rather than seeking permanent approval of the pilot, however, proposes one additional extension of the pilot program in order to be able to better evaluate the effectiveness, impact, and merits of the LMM program as well as any benefits to the public that may ensue from the operation of the pilot program.

The PSE believes that the proposed rule change is consistent with section 6(b)(5) of the Act in that it will facilitate securities transactions, enhance competition, and promote the protection of investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposed a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested accelerated approval of the proposed rule change pursuant to section 19(b)(2) of the Act so that the LMM pilot program can continue. The Commission finds that the proposed rule change to extend the pilot program until September 30, 1993 is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and the rules

and requirements thereunder.⁹ The Commission concludes, as it did when approving the commencement of the pilot program, that the PSE proposal may enhance the market-making mechanism on the PSE, thereby improving the markets for listed options on the Exchange. Specifically, the Commission believes the LMM pilot program may improve the PSE's market making capabilities by creating long-term commitments to options classes. Moreover, the pilot program will continue with adequate due process safeguards in the LMM selection and termination procedures and retain procedures that prevent the misuse of material non-public LMM information by either an LMM or a broker-dealer affiliated with an LMM.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the *Federal Register* because the PSE has not indicated that there have been any problems associated with the operation of the LMM system. In addition, while the Commission believes good cause exists to approve the extension of the pilot program on an accelerated basis to allow it to continue, the Commission is currently reviewing a report prepared by the PSE relating to the status and operation of the pilot program.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 21, 1993.

⁹ 15 U.S.C. 78f(b)(5) (1982).

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹⁰ that the proposed rule change (SR-PSE-92-36) is approved and, accordingly, the Lead Market Maker pilot program is extended until September 30, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jenathan G. Katz,
Secretary.

[FR Doc. 92-31742 Filed 12-29-92; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Licensee #09/09-5265]

Pacific Capital Fund; License Surrender

Notice is hereby given that Pacific Capital Fund, ("Pacific Capital"), 675 Mariner's Island Blvd., San Mateo, California, 94404, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). Pacific Capital was licensed by the Small Business Administration on July 27, 1981.

Under the authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on December 8, 1992, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 22, 1992.

Wayne S. Foren,
Associate Administrator for Investment.
[FR Doc. 92-31628 Filed 12-29-92; 8:45 am]
BILLING CODE 8025-01-M

Region V Advisory Council; Public Meeting

The U.S. Small Business Administration Region V Advisory Council, located in the geographical area of Cleveland, will hold a public meeting from 9 a.m. to 12 noon on Friday, January 29, 1993 at the U.S. Small Business Administration, 1111 Superior Avenue, suite 630, Cleveland, Ohio, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Norma M. Nelson, District Director, U.S. Small Business Administration, 1111

¹⁰ 15 U.S.C. 78s(b)(2) (1982).

Superior Avenue, suite 630, Cleveland, Ohio 44114-2507, (216) 522-4180 EXT 107.

Dated: December 23, 1992.

Caroline J. Beeson,

Assistant Administrator, Office of Advisory Councils.

[FR Doc. 92-31627 Filed 12-29-92; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended December 18, 1992

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 48554

Date filed: December 14, 1992

Parties: Members of the International

Air Transportation Association

Subject: Telex—Comp Reso. 024F—

Iceland Local Currency Fare Changes

Proposed Effective Date: January 1, 1993

Docket Number: 48555

Date filed: December 14, 1992

Parties: Members of the International

Air Transportation Association

Subject: Comp Mail Vote 603 Amend

Rounding Units for Mexico

Proposed Effective Date: January 1, 1993

Docket Number: 48558

Date filed: December 16, 1992

Parties: Members of the International

Air Transportation Association

Subject: Telex—Resolution 024F—

Sweden Local Currency Fare Changes

Proposed Effective Date: January 3, 1993

Docket Number: 48561

Date filed: December 18, 1992

Parties: Members of the International

Air Transport Association

Subject: Telex—TC23 Mail vote 606

Middle East—TC3 fares

Proposed Effective Date: December 24,

1992

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92-31616 Filed 12-29-92; 8:45 am]

BILLING CODE 4910-62-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended December 18, 1992

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR

302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 48549.

Date filed: December 11, 1992.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 8, 1993.

Description: Application of Time Air Sweden AB, d/b/a Air Sweden, pursuant to Section 402 of the Act and subpart Q of the Regulations applies for an initial foreign air carrier permit authorizing it to engage in foreign charter air transportation of persons and property from a point or points in Denmark, Norway and Sweden to a point or points in the United States. In addition, Air Sweden requests authority to operate charter services between all points in the United States and points not in Denmark, Norway or Sweden, or in the United States pursuant to part 212 of the Department's Economic Regulations.

Docket Number: 45723.

Date filed: December 18, 1992.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 15, 1993.

Description: Application of Transportes Aereos Ejecutivos, S.A. de C.V., pursuant to section 402 of the Act and subpart Q of the Regulations, applies for Amendment of its Foreign Air Carrier Permit, to permit TAESA to engage in the scheduled air transportation of persons, property and mail on the scheduled combination route: Zacatecas, Mexico, on the one hand, and Los Angeles, CA, on the other hand.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 92-31617 Filed 12-29-92; 8:45 am]

BILLING CODE 4910-62-M

Coast Guard

[CGD 92-075]

Towing Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice

is hereby given of a meeting of the Towing Safety Advisory Committee (TSAC) and Subcommittees. A preliminary meeting of the TSAC Subcommittees will be held on Wednesday, January 13, 1993, in room 2415 of U.S. Coast Guard Headquarters. This meeting is scheduled to run from 3 p.m. to 4 p.m. Attendance is open to the public. The full Committee meeting will be held on Thursday, January 14, 1993, from 8:30 a.m. to 12 noon in the same room. This meeting is also open to the public. The agenda follows:

1. Subcommittee Reports

- a. Personnel Manning and Licensing
- b. Tug-Barge Construction, Certification and Operations
- c. Personnel Safety and Workplace Standards
- d. Oil Pollution Act of 1990 Implementation

2. Other Topics of Discussion

With advance notice, and at the discretion of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the TSAC Executive Director no later than the day before the meeting.

Written statements or materials may be submitted for presentation to the Committee at any time; however, to ensure distribution to each Committee member, 20 copies of the written material should be submitted to the Executive Director by January 8, 1993.

FOR FURTHER INFORMATION CONTACT: CDR Robert Letourneau, Executive Director, Towing Safety Advisory Committee, room 1300, U.S. Coast Guard Headquarters (G-MTH-4), 2100 Second Street, SW., Washington, DC 20593-0001, (202) 267-2997.

Dated: December 21, 1992.

R.C. North,

Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 92-31592 Filed 12-29-92; 8:45 am]

BILLING CODE 4910-14-M

Federal Highway Administration

Intelligent Vehicle-Highway Society of America; Public Meetings

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meetings.

SUMMARY: The Intelligent Vehicle-Highway Society of America (IVHS AMERICA) will hold meetings of its Coordinating Council on January 27 and January 28 and of its Board of Directors on February 22, 1993. IVHS AMERICA

provides a forum for national discussion and recommendations on IVHS activities including programs, research needs, strategic planning, standards, international liaison, and priorities. The charter for the utilization of IVHS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act, 5 U.S.C. App. 2, when it provides advice or recommendations to DOT officials on IVHS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Coordinating Council of IVHS AMERICA will meet on January 27, from 1 p.m. to 5 p.m., and on January 28, 1993, from 8:00 a.m. to 4 p.m., c.t. The session is expected to focus on: (1) Report from the Coordinating Council Committee Review (Sunset/Sunrise) Task Group, (2) Technical Committee Reports, (3) International Update, (4) Systems Architecture Program Update, (5) Automated Highway System Update, (6) Preliminary Planning for the next Tactical Plan, and (7) Other technical activities of IVHS AMERICA.

The Board of Directors will meet on February 22, 1993, from 8:30 a.m. to 4 p.m., c.t. The session is expected to focus on: (1) Coordinating Council report, (2) Discussion of IVHS AMERICA annual planning schedule and process, (3) Report of the Coordinating Council Committee Review (Sunset/Sunrise) Task Group, (4) Report of the International Liaison Committee, and (5) Nominating Committee presentation of proposed nominations for Board of Directors and Coordinating Council members. All of the meetings are open to the general public.

ADDRESSES: The Grand Kempinski Dallas, 15201 Dallas Parkway, Dallas, Texas 75248.

FOR FURTHER INFORMATION CONTACT:

Mr. Lyle Saxton, FHWA, HSR-1, 6300 Georgetown Pike, McLean, VA, 22101, (703) 285-2021, office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except for legal holidays; or Dr. James Costantino, IVHS AMERICA, 1776 Massachusetts Avenue, NW, fifth floor, Washington, DC 20036, (202) 857-1202.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: December 23, 1992.

T.D. Larson,
Administrator.

[FR Doc. 92-31737 Filed 12-29-92; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. 92-69; Notice 1]

Receipt of Petition for Determination That Nonconforming 1974 BMW R75/6 Motorcycles Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for determination that nonconforming 1974 BMW R75/6 motorcycles are eligible for importation.

SUMMARY: This notice requests comments on a petition submitted to the National Highway Traffic Safety Administration (NHTSA) for a determination that a 1974 BMW R75/6 motorcycle that was not originally manufactured to comply with all applicable Federal motor vehicle safety standards is eligible for importation into the United States because (1) it is substantially similar to a vehicle that was originally manufactured for importation into and sale in the United States and that was certified by its manufacturer as complying with the safety standards, and (2) it is capable of being readily modified to conform to the standards.

DATES: The closing date for comments on the petition is January 29, 1993.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are from 9:30 a.m. to 4 p.m.).

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202-366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that

(I) the motor vehicle is * * * substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 [of the Act], and of the same model year * * * as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards * * *.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the Federal Register.

Champagne Imports Inc. of Lansdale, Pennsylvania ("Champagne") (Registered Importer No. R-90-009) has petitioned NHTSA to determine whether 1974 BMW R75/6 motorcycles are eligible for importation into the United States. The vehicle that Champagne believes is substantially similar is the 1974 BMW R75/6 that was manufactured for importation into and sale in the United States and that was certified by its manufacturer, Bayerische Motoren-Werke A.G., as complying with all applicable Federal motor vehicle safety standards.

The petitioner stated that it performed a careful evaluation of the non-U.S. certified 1974 BMW R75/6, and determined that it is substantially similar to its U.S. certified counterpart. Based on this evaluation, the petitioner contends that the non-U.S. certified 1974 BMW R75/6, as originally manufactured, conforms to many Federal motor vehicle safety standards in the same manner as its U.S. certified counterpart, or is capable of being readily modified to conform to those standards.

Specifically, the petitioner claims that the two models are identical with respect to compliance with Standards Nos. 106 Brake Hoses, 108 Lamps, Reflective Devices and Associated Equipment, 111 Rearview Mirrors, 113 Hood Latch Systems, 115 Vehicle Identification Number, 116 Brake Fluid, 119 New Pneumatic Tires for Vehicles other than Passenger Cars, 120 Tire Selection and Rims for Motor Vehicles other than Passenger Cars, 122 Motorcycle Brake Systems, 123 Motorcycles Controls and Displays, and 205 Glazing Materials.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested

but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 29, 1993.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on December 17, 1992.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 92-31571 Filed 12-29-92; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

December 23, 1992.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt

OMB Number: 1535-0097.

Form Number: PD F 4087, 4087-1 and 4087-3.

Type of Review: Reinstatement.

Title: Bond of Indemnity.

Description: These forms are used to support claims/applications for relief on account of lost, stolen or destroyed securities. The forms serve as an indemnity notification agreement to guarantee reimbursement to the Government in the event of an erroneous payment of securities on which relief was previously obtained from the Department.

Respondents: Individuals or households, State or local governments, businesses or other for-

profit, non-profit institutions, small businesses or organizations.
Estimated Number of Respondents: 500.
Estimated Burden Hours Per Response: 1 hour.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 500 hours.
Clearance Officer: Vicki S. Ott, (304) 420-6553, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106-1328.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 92-31729 Filed 12-29-92; 8:45 am]

BILLING CODE 4810-40-M

Fiscal Service

Renegotiation Board Interest Rate Prompt Payment Interest Rate Contracts Disputes Act

Although the Renegotiation Board is no longer in existence, other Federal Agencies are required to use interest rates computed under the criteria established by the Renegotiation Act of 1971 (Pub. L. 92-41). For example, the Contracts Disputes Act of 1978 (Pub. L. 95-563) and the Prompt Payment Act (Pub. L. 97-177) are required to calculate interest due on claims at a rate established by the Secretary of the Treasury pursuant to Public Law 92-41 (85 Stat. 97) for the Renegotiation Board (31 U.S.C. 3902).

Therefore, notice is hereby given that, pursuant to the above mentioned sections, the Secretary of the Treasury has determined that the rate of interest applicable for the purpose of said sections, for the period beginning January 1, 1993 and ending on June 30, 1993, is 6½% per centum per annum.

Dated: December 23, 1992.

Marcus W. Page,

Acting Fiscal Assistant Secretary.

[FR Doc. 92-31581 Filed 12-29-92; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF VETERANS AFFAIRS

Veterans Health Administration Scientific Review and Evaluation Board for Health Services Research and Development; Notice of Meetings

The Department of Veterans Affairs, Veterans Health Administration, gives notice under Public Law 92-463 that an

advisory committee meeting of the Scientific Review and Evaluation Board for Health Services Research and Development will be held at the Royal Sonesta Hotel, 5 Cambridge Parkway, Cambridge, Massachusetts, on January 11-13, 1993. The meeting scheduled for January 11 will convene at 3 p.m. and adjourn at 6:45 p.m. Meetings scheduled for January 12 and 13 will convene at 8:30 a.m. and adjourn at 5:15 p.m. on January 12 and on January 13 at 3 p.m. The purpose of the meetings will be to review research and development applications concerned with the measurement and evaluation of health care systems and with testing new methods of health care delivery and management. Applications are reviewed for scientific and technical merit and recommendations regarding their funding are prepared for the Associate Chief Medical Director for Research and Development.

The meeting will be open to the public (to the seating capacity of the room) at the start of the January 11th session for approximately one hour to cover administrative matters and to discuss the general status of the program. The closed portion of the meetings involves: Discussion, examination, reference to, and oral review of staff and consultant critiques of research protocols, and similar documents. During this portion of the meeting, discussion and recommendations will deal with qualifications of personnel conducting the studies, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, as well as research information, the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action regarding such research projects. As provided by subsection 10(d) of Public Law 92-463, as amended by Public Law 94-409, closing portions of these meetings is in accordance with 5 U.S.C. 552b(c)(6) and (9)(B).

Due to the limited seating capacity of the room, those who plan to attend the open session should contact Mrs. Carolyn Smith, Program Analyst, Health Services Research and Development Service, 810 Vermont Avenue, NW., Washington, DC 20420, (phone: 202/535-7158) at least 5 days before the meetings.

Dated: December 11, 1992.

Diane H. Landis

Committee Management Officer.

[FR Doc. 92-31705 Filed 12-29-92; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 57, No. 251

Wednesday, December 30, 1992

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL HOUSING FINANCE BOARD

"FEDERAL REGISTER" CITATION OF

PREVIOUS ANNOUNCEMENT: 57 FR 58550, December 10, 1992

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING:

9:30 a.m., Tuesday, December 15, 1992
10:00 a.m., Wednesday, December 16, 1992

CHANGES IN THE MEETING: The following topics were deleted from the agenda during the open portion of the meeting held on Wednesday, December 16, 1992.

1. FHLBank System Appointive Directors Confirmation
2. Advances Regulation—Final Rule

The following topics were added to the agenda during the closed portion of the meeting on Tuesday, December 15, 1992.

1. FHLBank System Appointive Directors Confirmation
2. FHLBank of San Francisco Dividends

The above matters are exempt under section 522b(c) (6) and (9) (A) and (B) of title 5 of the United States Code.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Executive Secretary to the Board, (202) 408-2837.

Philip L. Conover,
Managing Director.

[FR Doc. 92-31755 Filed 12-28-92; 9:13 am]

BILLING CODE 6725-01-M

NATIONAL COUNCIL ON DISABILITY

Quarterly Meeting

AGENCY: National Council on Disability.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of the National Council on Disability. This notice also describes the functions of the National Council. Notice of this

meeting is required under section 522(b)(10) of the "Government in the Sunshine Act" (P.L. 94-409).

DATES: January 25-27, 1993, 8:30 a.m. to 5:00 p.m..

LOCATION: The Westin La Paloma, 3800 East Sunrise Drive, Tucson, Arizona 85718, (602) 742-6000.

FOR FURTHER INFORMATION CONTACT:

National Council on Disability, 800 Independence Avenue, SW, Suite 814, Washington, DC 20591, (202) 267-3846, (202) 267-3232 (TDD).

The National Council on Disability is an independent Federal agency comprised of 15 members appointed by the President of the United States and confirmed by the Senate. Established by the 95th Congress in Title IV of the Rehabilitation Act of 1973 (as amended by Public Law No. 95-602 in 1978), the National Council was initially an advisory board within the Department of Education. In 1984, however, the National Council was transformed into an independent agency by the Rehabilitation Act Amendments of 1984 (Public Law 98-221).

The National Council is charged with reviewing all laws, programs, and policies of the Federal Government affecting individuals with disabilities and making such recommendations as it deems necessary to the President, the Congress, the Secretary of the Department of Education, the Commissioner of the Rehabilitation Services Administration, and the Director of the National Institute on Disability and Rehabilitation Research (NIDRR). In addition, the National Council is mandated to provide guidance to the President's Committee on Employment of People With Disabilities.

The quarterly meeting of the National Council shall be open to the Public. The proposed agenda includes:

NCD Members and Staff Total Quality Management Training

Reporting from Chairperson and Executive Committee

Update on NIDRR

Update on ADA Watch

Update on public policy studies: education; technology; and, health insurance

Update on international conference

Committee Meetings/Committee Reports

Unfinished Business

New Business

Announcements

Adjournment

Records shall be kept of all National Council proceedings and shall be available after the meeting for public inspection at the National Council on Disability.

Signed at Washington, DC on December 28, 1992.

Frederick D. Bedell,

Acting Executive Director.

[FR Doc. 92-31783 Filed 12-28-92; 3:39 pm]

BILLING CODE 6820-88-M

NATIONAL TRANSPORTATION SAFETY BOARD AGENDA

TIME AND DATE: 9:30 a.m., Tuesday, January 5, 1993.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

5701A—Pipeline Accident Summary Report: Pipeline Overpressure of Peoples Gas Light and Coke Company Low-Pressure Distribution System, Chicago, Illinois, January 17, 1992

NEWS MEDIA CONTACT: Telephone (202) 382-0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

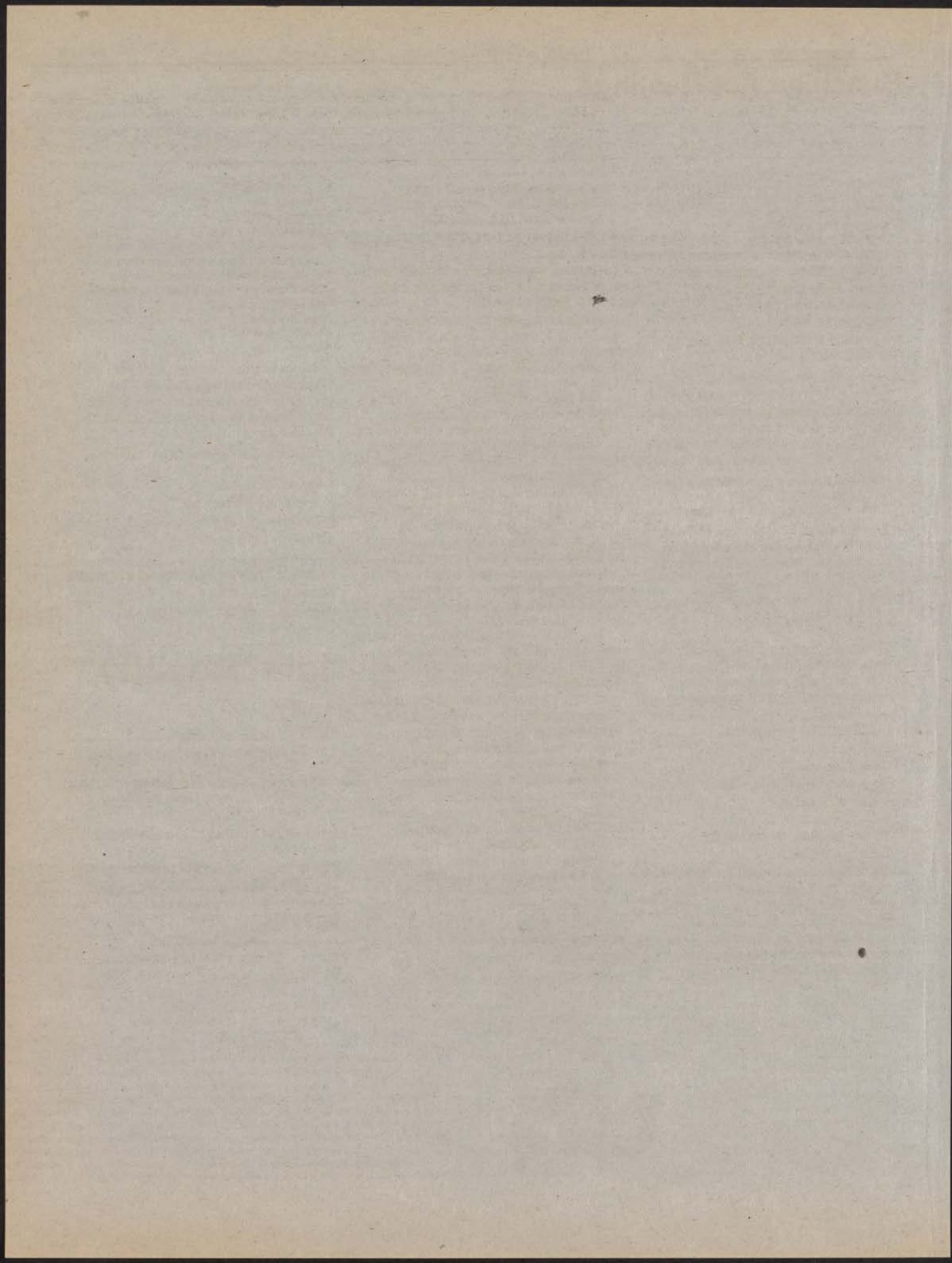
Dated: December 28, 1992.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 92-31824 Filed 12-28-92; 3:40 pm]

BILLING CODE 7533-01-M



test report federal tribunal

Wednesday
December 30, 1992

Part II

Copyright Royalty Tribunal

Consolidated 1989-91 Satellite Carrier
Royalty Distribution Proceeding; Notice

COPYRIGHT ROYALTY TRIBUNAL

[Docket Nos. 91-1-89SCD, 91-5-90SCD, 92-2-91SCD]

Consolidated 1989-91 Satellite Carrier Royalty Distribution Proceeding

AGENCY: Copyright Royalty Tribunal.
ACTION: Notice of final determination.

SUMMARY: The Copyright Royalty Tribunal announces the adoption of its final determination in the proceeding concerning the distribution to copyright owners of royalty fees paid by satellite carriers for secondary transmissions to home dish owners during the period of 1989-1991.

FOR FURTHER INFORMATION CONTACT:

Linda R. Bocchi, General Counsel,
 Copyright Royalty Tribunal, 1825
 Connecticut Avenue, NW., suite 918,
 Washington, DC 20009.

SUPPLEMENTARY INFORMATION: On October 15, 1992, the Program Suppliers, Broadcaster Claimants, American Society of Composers, Authors and Publishers, Joint Sports Claimants, Broadcast Music, Inc., SESAC, Inc., and Devotional Claimants (hereinafter collectively referred to as "Certain Copyright Owners") filed joint comments reporting that they had been able to negotiate a settlement among themselves; but they had been unable to negotiate a settlement with the Networks and Public Broadcasting Service (PBS). Therefore, they requested that the Tribunal declare two Phase I controversies: (1) A controversy between works which are owned by the Networks and works which are owned by Certain Copyright Owners; and (2) a controversy between works which are owned by PBS and works which are owned by Certain Copyright Owners.

By Order of October 21, 1992, 57 FR 48023 (1992), the Tribunal commenced the consolidated 1989-1991 satellite carrier royalty distribution proceeding, and scheduled a prehearing conference to discuss procedural matters. Prior to the prehearing conference, on October 21, 1992, PBS filed a pleading addressing the scope of the Phase I issues and proposing a two-stage Phase I proceeding. PBS argued that Certain Copyright Owners' "proposal contemplates a 'fee generation' or 'pay-in/pay-out' approach, under which the royalty award to PBS or the commercial networks would be limited to what satellite operators have actually paid as compulsory license fees for the retransmission of public television or commercial network stations." PBS alleged that the Tribunal has consistently refused to accept the

proposition that the allocation of copyright royalties should be determined on a "fee generation" basis. Finally, PBS requested a bifurcated Phase I proceeding with stage one being used to define the controversy or controversies which exist in Phase I.

On October 23, 1992, Certain Copyright Owners filed a "Motion for Partial Distribution," requesting prompt distribution to them of all royalties paid for carriage of superstations by satellite carriers for 1989, 1990, and 1991 (including interest earned). Certain Copyright Owners claimed that they own all the works contained in the retransmissions of superstations, and have agreed among themselves as to the division of royalties allocated to those retransmissions. They, therefore, concluded that, with regard to those royalties, there is no controversy.

At the October 26, 1992 prehearing conference, the Tribunal granted the request of several of the parties to bifurcate the Phase I proceeding into two stages. The first stage involved the scope of the issues to be considered in Phase I, and was determined on the basis of the briefs filed by the parties. Decisions and Order (December 4, 1992).¹

In its Decision and Order, the Tribunal also invited the parties to file comments on the Motion for Partial Distribution. The comments were due no later than December 15, 1992. Having determined stage one of Phase I, the Tribunal was prepared to commence stage 2 of Phase I, which is the hearing stage. The Tribunal, therefore, issued a Notice designating the procedural schedule for the Consolidated 1989-1991 Satellite Carrier Royalty Distribution, 57 FR 58010 (1992).

PBS filed comments on December 11, 1992, supporting the Motion for Partial Distribution. On December 14, 1992, Certain Copyright Owners and the Networks advised the Tribunal that they had reached an agreement in principal. They requested a one day extension to file their comments on the Motion for Partial Distribution. None of the parties objected to the extension request. The Tribunal granted the request. Thereafter, on December 16, 1992, the Networks contacted the Tribunal and requested an additional three day extension for filing the joint comments of Certain Copyright Owners and the Networks. The Networks also represented that PBS had no objection to the brief extension of time. The Tribunal granted the request.

¹ The December 4, 1992 Decision and Order (Attached as Appendix), and this Notice of Final Determination, together constitute the final determination of the 1989-1991 Satellite Carrier Royalty Proceeding.

On December 21, 1992, the Networks and Certain Copyright Owners filed their joint Comments on Distribution of Royalties. They formally informed the Tribunal that they had reached a settlement concerning distribution of the 1989-1991 satellite carrier royalties. They concluded that since the settlement had resolved the last remaining controversy regarding distribution of the royalties, the Tribunal should distribute all the royalties.

Based upon the fact that the parties in this proceeding have reached a global settlement and requested total distribution, Certain Copyright Owners' Motion for Partial Distribution is dismissed. Accordingly, since the parties have resolved all the controversies regarding distribution of the consolidated 1989-1991 satellite carrier royalties, the proceeding is terminated and the request for total distribution is granted. 17 U.S.C. 119. Pursuant to the request of all the parties, the 1989-1991 satellite carrier royalties shall be distributed on Tuesday, January 12, 1993, to a common agent.² 17 U.S.C. 119(b)(4)(A).

Dated: December 22, 1992.

Cindy Daub,
 Chairman.

Appendix

In the matter of 1989-1991 Satellite Carrier Royalty Distribution Proceedings, CRT Docket Nos. 91-1-89SCD, 91-5-90SCD, 92-2-91SCD.

Decision and Order

The Copyright Royalty Tribunal has determined that the Joint Network Parties (Networks) are not entitled to receive royalties paid by satellite carriers to retransmit superstations and public television stations. Although the Tribunal adheres to its previous rejection of an automatic pay-in/pay-out formula, it distinguishes the question of allocating royalties from within a single fund vis-a-vis the question of allocating royalties from separate funds.

Background

On October 15, 1992, the Program Suppliers, Broadcaster Claimants, American Society of Composers, Authors, and Publishers, Joint Sports Claimants, Broadcast Music, Inc., SESAC, Inc., and Devotional Claimants (hereinafter Certain Copyright Owners) filed joint comments reporting that they had been able to negotiate a settlement among themselves, but they had been unable to negotiate a settlement with the

² The parties have stated that they will notify the tribunal as to the identity of the common agent.

Networks and Public Broadcasting Service (PBS). Therefore, they requested that the Tribunal declare two Phase I controversies: (1) A controversy between works which are owned by the Networks and works which are owned by Certain Copyright Owners; and (2) a controversy between works which are owned by PBS and works which are owned by Certain Copyright Owners. On October 21, 1992, PBS filed a pleading addressing the scope of the Phase I issues and proposing a two-stage Phase I proceeding. PBS argued that Certain Copyright Owners' "proposal contemplates a 'fee generation' or 'pay-in/pay-out' approach, under which the royalty award to PBS or the commercial networks would be limited to what satellite operators have actually paid as compulsory license fees for the retransmission of public television or commercial network stations." PBS alleged that the Tribunal has consistently refused to accept the proposition that the allocation of copyright royalties should be determined on a "fee generation" basis. Finally, PBS requested a bifurcated Phase I proceeding with stage one being used to define the controversy or controversies which exist in Phase I.

On October 23, 1992, Certain Copyright Owners filed a "Motion For Partial Distribution," requesting prompt distribution to them of all royalties paid for carriage of superstations by satellite carriers for 1989, 1990, and 1991 (including interest earned). Certain Copyright Owners claimed that they own all the works contained in the retransmissions of superstations, and have agreed among themselves as to the division of royalties allocated to those retransmissions. They, therefore, conclude that, with regard to those royalties, there is no controversy.

At the October 26, 1992 prehearing conference, the Tribunal granted PBS' request for a bifurcated Phase I proceeding. The Tribunal directed Certain Copyright Owners, PBS, and the Networks to file briefs and reply briefs addressing stage one of the Phase I proceeding. The Tribunal also deferred making a decision on the request for partial distribution until after the conclusion of stage one.

After the prehearing conference, but prior to the filing of the briefs, Certain Copyright Owners and PBS reached a settlement. Consequently, only Certain Copyright Owners and the Networks filed briefs.

Certain Copyright Owners' Arguments

Certain Copyright Owners contend that "(t)he only issue currently before the Tribunal is whether the Networks

(ABC, CBS, and NBC) may receive any of the royalties paid by satellite carriers to retransmit superstations—even though none of the programs within the Networks' Phase I claim was broadcast on those superstations." Certain Copyright Owners believe that the Networks are not entitled to any portion of the superstation fund because none of the Networks' copyrighted works appeared on superstations.³

Certain Copyright Owners note that pursuant to the Satellite Home Viewer Act of 1988 (SHVA), satellite carriers pay different rates for carriage of network stations and superstations. Specifically, in 1989–1992, satellite carriers paid 3¢ for network stations and 12¢ for superstations.⁴ This discrepancy in rates, they maintain, is due to the fact that the Networks made a conscious trade-off during the legislative process, opting to accept a lower rate in order to prevent the retransmission of any network stations to areas served by the Networks' affiliates. Consequently, network stations may be retransmitted by satellite carriers only to those geographic areas that are not served by any other station affiliated with that network (white areas). Certain Copyright Owners accuse the Networks of being disingenuous because "(h)aving sought the legislative restrictions which effectively reduce the total Section 119 royalties paid for network stations and having agreed to the lower (3 cents) rate for those stations, the Networks now seek to inflate their share of Section 119 royalties at the expense of Copyright Owners."

Certain Copyright Owners maintain that Congress directed the Tribunal to consider its cable royalty distribution precedent in allocating the satellite royalties. Examining the cable precedent, they maintain that the present case is analogous to the 3.75 and Syndex royalties rather than the Basic cable royalties. Specifically, they state that the satellite carrier royalty "plan is comparable to the cable 3.75 and Syndex plans because reporting and payment calculations under all three are based on individually identified stations." Since 1983, the Tribunal has divided the cable royalties into three funds: Basic, 3.75, and Syndex. Citing the Tribunal's 1983 cable royalty distribution decision which created the three funds, and the Court of Appeals'

decision which affirmed it, Certain Copyright Owners assert that the Tribunal has never permitted a claimant to receive any portion of a royalty fund comprised of fees paid for stations which did not carry any of its copyrighted works.⁵

Certain Copyright Owners differentiate the Basic cable royalty plan from the satellite carrier royalty plan on the grounds that Basic royalties are not divided by type of station for reporting, payment, or distribution purposes. They explain that Basic cable royalties are calculated using a "distant signal equivalent" (DSE) factor, so that each type of station is assigned a DSE value: 1.0 DSE for independents and 0.25 DSE for network affiliates and public television. Larger (Form 3) cable systems pay Basic royalties based on the total DSE value, using a sliding percentage scale which declines as the number of DSE's increase.⁶ Moreover, they state, smaller (Form 1 and 2) cable systems pay either \$28 per accounting period or a fee based on flat percentage rates, irrespective of the number of distant signals, if any, they carry.⁷ They conclude that, the assignment of any specific amount of royalties to a particular station under the Basic cable payment plan is "problematic."

Certain Copyright Owners also distinguish the division of royalties into separate funds from the fee generation approach for distribution. Specifically, they rely on the Tribunal's 1983 cable decision, in which it rejected the argument that the division of royalties into separate funds was equivalent to a "fee generated" approach to distribution.⁸ This decision, they point out, was wholly affirmed on appeal.⁹ They maintain that establishing eligibility to receive royalties is only the starting point of any distribution process. Eligible parties are then required to prove their entitlement to a specific percentage share of each fund, through evidence of the value of their copyrighted works. Certain Copyright Owners declare that historically, "time-plus-fee generation" has been presented to the Tribunal as a method for allocating value among programming types, not to divide royalties among station types so as to determine claimant eligibility.

With respect to the statements made by the Tribunal and the Arbitration

³ In this Phase I proceeding, we are considering only the network-produced and copyrighted programming which appeared on network stations. Network-produced and copyrighted programming which appeared on independent stations will be considered as "syndicated programming" in the Phase II proceeding.

⁴ 17 U.S.C. 119(b)(1)(B) (1991).

⁵ 1983 Cable Royalty Distribution Proceeding Final Determination, 51 FR 12792 (1986); *NAB v. CRT*, 809 F.2d 172 (2d Cir. 1986).

⁶ 37 CFR 308.2(a) (1991); 17 U.S.C. 111(d)(1)(B) (i)-(iv) (1991).

⁷ 17 U.S.C. 111(d)(1)(C), (D) (1991).

⁸ 51 FR at 12807.

⁹ 809 F.2d at 178.

Panel (Panel) regarding "pay-in/pay-out" during the recent satellite carrier rate adjustment proceeding.⁹ Certain Copyright Owners argue that statements were directed only at the issue of rate-setting. They explain that in the rate adjustment proceeding, the "pay-in/pay-out" issue therein was triggered by the fact that, in the case of satellite royalties, unlike in the case of cable royalties, owners of network programming are entitled to claim royalties. Consequently, in satellite, unlike in cable, all of the programming on network stations is compensable, not just the non-network programming. Certain Copyright Owners maintain that, because "of this parity on the 'pay-out' side, it was argued, unsuccessfully, that the rates (or 'pay-in') for superstations and network stations should be equal." They conclude that the Tribunal and the Panel found that the SHVA requires the balancing of several competing factors, not just the fact that all programming on both types of stations was compensable, in setting a final rate for network stations. Certain Copyright Owners contend that such a ruling which concerns "the rate (or 'pay-in') for network stations" has no precedential value where the issue is one of a claimant's eligibility to receive a share of a fund consisting of royalties paid for stations which never carried its copyrighted works.

In their reply brief, Certain Copyright Owners reiterate the position that the only issue before the Tribunal in stage one of the Phase I proceeding is whether the Networks are eligible to receive royalties paid specifically for carriage of stations on which no network-owned programming appeared. They conclude that the foregoing question must be answered in the negative, because the royalties paid for network stations are limited to the monies available for distribution to the owners of copyrighted works which appeared on those stations.

That issue, they assert, is not addressed by the time-plus-fee-generated approach, which has been proposed in the past as a method for determining the value of each of the claimant's copyrighted works. They further explain that the Networks are incorrect in equating pay-in/pay-out with the time-plus-fee-generated methodology. Pay-in/pay-out, they allege, is merely the first step in the time-plus-fee-generated approach. Therefore, they conclude, the precedent which exists regarding the time-plus-

fee-generated methodology is not controlling in the instant case.

Certain Copyright Owners differentiate the treatment of PBS in cable royalty distributions from the proposed treatment of the Networks in satellite royalty distributions. They restate their belief that it is not possible to precisely ascertain the amount that is paid into the cable Basic Fund for each station, including public television. They base their assertion on the methodology used to calculate cable royalty fees. Certain Copyright Owners point out that during the 1989 cable royalty distribution proceeding, testimony was presented to the effect that royalties in the cable Basic Fund can be assigned only by averaging the total royalties paid by a cable system, by the number of stations carried by that cable system. Moreover, they maintain that the testimony concerning the amount of carriage and royalty fees paid for public television and other stations, given during the 1989 proceeding, was presented solely to compare year-to-year trends or differences between claimants, not to ascertain exact amounts paid into the funds. Accordingly, since it is not possible to accurately calculate the amount that was paid in by cable systems for carriage of public television, it is impossible to prove or disprove the Networks' claim that PBS received more than the amounts paid by cable systems for carriage of public television stations.

Finally, Certain Copyright Owners rebut the Networks' allegation that the legislative history of the SHVA reflects the special value placed on network programming by satellite dish viewers. Certain Copyright Owners maintain that the statement of Chairman Kastenmeier, that "the bill takes affirmative steps to treat similarly" network and non-network programming relates solely to the fact that the SHVA directed the Federal Communications Commission (FCC) to determine the feasibility of imposing syndicated exclusivity rules, similar to those imposed on the cable industry, on the satellite dish industry.⁹

The Networks' Arguments

The Networks, on the other hand, oppose what they perceive as Certain Copyright Owners' attempt to apply pay-in/pay-out to the distribution of the satellite carrier royalties. The Networks allege that the Tribunal has consistently rejected a "pay-in/pay-out" approach for all programming. They cite as an example of the Tribunal's rejection of "pay-in/pay-out," its distribution of cable Basic Fund royalties to owners of

programs shown on public television stations.

They explain that under the cable royalty distribution plan "users pay only 1/4 as much in royalties for public TV stations and network stations as independent stations." According to the Networks, "the Copyright Office data make it possible to determine precisely how much money is paid into the cable Basic Fund for public television programs." To support this proposition they cite specific testimony, introduced in the 1989 cable royalty distribution proceeding. The Networks rely on the fact that although in 1989 the royalties paid for carriage of public television stations amounted to 2% of the Basic Fund, the Tribunal awarded 4% of the Basic Fund to programs carried on those stations.

The cable Basic Fund distribution, they assert, "is the clear analogue to the distribution of the satellite royalty fund," because "(i)n each case, every distributor must pay the royalty for carriage of a particular station, and in each case, network and public station royalties are one fourth those of independent stations." The Networks distinguish the two cable specialty funds, the 3.75 and the Syndex funds, on the ground that they were created in accordance with specific provisions of the Copyright Act, which apply only to cable proceedings.¹⁰

The Networks also refer to the Tribunal's two determinations addressing the SHVA: 1991 Notice of Declaratory Ruling¹¹, and the 1991 Satellite Carrier Rate Adjustment Proceeding¹². They construe statements made by the Tribunal in both decisions, that the "pay-in" may not necessarily correlate to the "pay-out" in cable and satellite, as supporting their proposition that the Networks should have access to royalties paid by satellite carriers for the carriage of superstations even though the Networks' copyrighted works were never carried by superstations¹³. Citing a string of cases, the Networks maintain that the Tribunal is bound by its precedent in the cable and satellite proceedings because "(a)s a general legal principal, an agency may not, absent a clearly articulated and logically defensible rationale, reach different results in cases with essentially the same facts."

The Networks allege that "(n)othing in the legislative history of the SHVA suggests that Congress intended that the distribution of the royalty fund to the

⁹ 1991 Satellite Carrier Rate Adjustment Proceeding, 57 FR 19052 (1992).

¹⁰ 134 Cong. Rec. H9664 (daily ed. October 5, 1988) (statement of Chairman Kastenmeier).

¹¹ 17 U.S.C. 801(b)(2)(B), (C) (1991).

¹² 56 FR 20414 (1991).

¹³ 57 FR 19052 (1992).

¹⁴ 58 FR at 20415; 57 FR at 19052.

various copyright owners be influenced by the statutory mechanism for payment of fees into the fund by satellite carriers." They assert that the legislative history indicates that separate legislative concerns motivated the pay-in and distribution provisions. The Networks claim that "Congress meant to transplant into the SHVA the pay-in scheme from the cable compulsory license to * * * insure that the infant satellite home dish industry was not disadvantaged vis-a-vis the cable industry in its ability to obtain distant-signal broadcast station signals; to increase delivery system competition; to avoid cable dominance of the new home dish industry; and to avoid discriminatory home dish pricing."

With regard to the distribution of royalty funds, the Networks cite the SHVA Judiciary Report, in which the Judiciary Committee refused to impose "particular limiting standards for distribution" and recommended that the Tribunal "consider all pertinent data and considerations presented by the claimants, and * * * take into account its royalty distribution determinations under the section 111 (cable) compulsory license."¹⁴ The Networks also rely on a statement made by Chairman Kastenmeier that, "the bill takes affirmative steps to treat similarly the measure of copyright protection accorded to television programming distributed by national television networks and non-network programming distributed by independent television stations," as support for the proposition that compensation to the copyright owners for the use of network programming should not be restricted to the royalty fees collected for carriage of network stations.¹⁵

In their reply brief, the Networks accuse Certain Copyright Owners of confusing the issue in stage one of the Phase I proceeding. They allege that Certain Copyright Owners are attempting in stage one to create "an unfair and artificial ceiling" on the Networks' share of the royalty fund. They maintain that Certain Copyright Owners are trying "to confuse the pay-in/pay-out issue by suggesting that the statutory limitation of network station delivery only to 'white areas' is evidence that network compensation should be limited by the establishment of a separate network fund." The extent of subscription to network stations, they conclude, goes solely to the merits of

the claim for network-owned programming in a Phase I distribution. They deny that it provides support for the "preclusive pay-in/pay-out cap sought by Certain Copyright Owners."

The Networks reiterate their belief that the cable Basic Fund, rather than the 3.75 or Syndex fund, is the appropriate analogy to the satellite fund. They disagree with Certain Copyright Owners' assertion that it is difficult to discern the precise royalty payment made for a specific station. To support their position, they again cite the testimony presented during the 1989 cable royalty distribution proceeding regarding the decline of royalty fees paid for public television during the previous ten year period. They also reargue the proposition that the 3.75 and Syndex funds are distinguishable from the satellite fund in that the cable specialty funds were created in response to specific statutory authority, which only applies to cable proceedings.¹⁶

Discussion

The issue is one of eligibility—are the Networks eligible to receive royalties paid by satellite carriers to retransmit programs which are not owned by the Networks? Based on precedent, logic, and fundamental fairness, the Tribunal is unable to permit the Networks to share these royalties.¹⁷

Precedent

As stated above, both Certain Copyright Owners and the Networks assert that the Tribunal should adhere to past precedent. However, the parties would interpret and apply past precedent in a manner which would achieve diametrically opposite results.

In enacting section 119, Congress directed the Tribunal to consider its precedent in allocating cable distribution royalties under section 111. The 1983 Cable Royalty Distribution Proceeding¹⁸ is most instructive in interpreting this precedent. As in the instant proceeding, the Tribunal faced a novel issue regarding the allocation of royalties in the context of a new royalty structure.

In 1983, the cable royalty fund differed significantly from the previous cable royalty funds considered by the Tribunal. From 1978 to 1982, cable royalties were paid into a single Basic Fund derived entirely from payments made by cable systems according to the rates set by Congress in section 111 of

the Copyright Act of 1976.¹⁹ In 1983, for the first time, additional royalties were collected based upon: (i) The 3.75% rate for newly-permitted distant signals; and (ii) the Syndex surcharge, following the repeal by the FCC of the Syndex "blackout" rules. In the Phase I proceeding of the distribution proceeding, the Tribunal concluded that:

(T)here are different factors underlying the royalties which derive from the statutory rates, the 3.75% rate, and the syndicated exclusivity surcharge, and that this justifies dividing the 1983 cable royalty fund and making "three separate allocations" from: (i) The "Basic fund", (ii) the "3.75% fund", (iii) and the "Syndex fund" (emphasis added).

Because non-commercial educational stations were carried on an unlimited basis prior to FCC deregulation and no cable operator paid the 3.75% rate to carry any non-commercial stations, the Tribunal concluded that PBS was not entitled to any portion of the 3.75% fund. Because only the program suppliers and music claimants owned any copyrighted programming for which Syndex royalties were paid, all other claimants were excluded from sharing in the new Syndex fund.

Accordingly, the precedent set forth in the Tribunal's 1983 Cable Royalty Distribution Proceeding is abundantly clear—the Tribunal may make separate allocations from separate funds where the claimants are not eligible to share in the allocation of royalties from all the funds. And claimants whose copyrighted works were not carried by a particular type of station will be excluded from the distribution of the royalty fund comprised of fees paid for carriage of such stations.

Notably, the United States Court of Appeals for the Second Circuit gave its imprimatur to the Tribunal's decision to divide royalties into three separate funds in making its Phase I allocations:

Moreover, the establishment of the 3.75% and Syndex royalty rates made new distribution criteria imperative. Certain claimants are, in fact, ineligible to receive royalties at the new rates, and distribution of royalties from a single fund would require complex adjustments of awards. The Tribunal thus reasonably concluded that its task of distributing royalties would be facilitated by making separate allocations of the royalties collected at the three separate rates.²⁰ (emphasis added)

In alleging that a mechanical pay-in/pay-out approach has been repudiated, the Networks make much of the assertion that the Tribunal, in the past,

¹⁴ H.R. Rep. No. 887, 100th Cong., 2d Sess., pt. 1, at 23 (1988).

¹⁵ 134 Cong. Rec. H9864 (daily ed. October 5, 1988) (statement of Chairman Kastenmeier).

¹⁶ 17 U.S.C. 801(b)(2) (B), (C) (1991).

¹⁷ As noted above, PBS entered into a settlement agreement with Certain Copyright Owners. Accordingly, there is no issue involving PBS before the Tribunal.

¹⁸ 51 FR 12792 (1986).

¹⁹ Id.

²⁰ *NAB v. CRT*, 809 F.2d 172, 178 (2d Cir. 1986) (footnote omitted).

has awarded a higher percent of the Basic Fund to public television stations than is warranted based on the royalties paid for the carriage of these stations. We agree with the Networks that the Tribunal has rejected the automatic application of a pay-in/pay-out formula and acknowledge our recent statement that "the pay-in may not necessarily correlate to the pay-out".²¹ However, the question of allocating royalties from within a single fund is clearly distinguishable from the question of allocating royalties from separate funds. In the former, the possibility of error is remote. In the latter, the certainty of error is inevitable, in that it envisions, and possibly encourages, payment of an amount to a claimant from a fund comprised of royalty fees paid for the carriage of stations which did not carry any of the claimant's programming.

Furthermore, without passing on the appropriateness of allocating a greater payment from the Basic Fund than the amount allegedly paid into the Basic Fund, and without prejudging the issues which we must consider in Phase II of this or any other proceeding, we note that it is difficult and, perhaps, impossible to ascribe a value to the carriage of any station in the Basic Fund with sufficient specificity to guarantee that we will not exceed the appropriate payment. Under section 111, Basic cable royalties paid by the larger (Form 3) cable systems (which contribute the overwhelming majority of the royalty payments) are determined by using the "distant signal equivalent" (DSE) formula. But there are no statutory or technical mandates, nor even an industry-wide practice, for determining which stations will be accorded the higher rate for the "first" DSE vis-a-vis the lower rates for the second through fourth DSE's or the yet-lower rates for the fifth and additional DSE's.

There are additional considerations which preclude accurate calculation of the value of each station. For example, smaller systems pay a flat rate without regard to the number of distant signals. And the larger systems pay a minimum fee of .893% whether they carry one or no DSE's. Thus, royalties may be paid into the fund (or the denominator to be used in calculating the station's share of the royalty fund) even if there are no DSE's (and, therefore, no station can add this payment to its numerator). Consequently, any attempt to calculate the specific value of the royalty fees paid by cable systems for the carriage of a particular station is fated to be imprecise.

Unlike section 111, section 119 permits clear and unequivocal evaluation of the royalty fee paid for different categories of stations carried by the cable system. During the relevant time period, cable operators paid fees of 12¢ per subscriber per month for superstations and 3¢ per subscriber per month for network affiliates and public television stations. These two categories (of 12¢/sub/month and 3¢/sub/month) permit accurate evaluation of the royalty fees paid by satellite carriers for carriage of the stations within each category. These categories are analogous to the Basic, 3.75%, and Syndex categories. We have consistently found the three categories to be sufficiently distinct and identifiable to warrant denying a copyright owner, whose works have appeared on stations for which only one category type of royalties were paid, a share of a fund from another category.

Moreover, we note that the Networks do not allege that the Tribunal has ever allocated royalties to a copyright owner from within a fund comprised of royalties paid for stations which never carried any of the copyright owner's works. Instead, the Networks contend that the "Basic cable fund is the clear analogue to the SHVA royalty fund" and that the 3.75% and Syndex funds "are not relevant".

However, the Basic Fund is comprised entirely of stations for which the cable operator pays the same rate, unlike the SHVA royalty fund which, during the period in issue, consisted of two rates. Clearly, the Basic Fund under section 111 is analogous to only one of the funds under section 119; and the three section 111 funds (Basic, 3.75%, and Syndex) are analogous to the two Section 119 SHVA funds (12¢ and 3¢).

Consequently, we are not persuaded that the payment of royalties to a copyright owner which allegedly exceed the amount that is paid in by copyright users for the use of the copyrighted work, and which are from within a single fund is sufficient precedent to support the Network's claim, or is sufficient to rebut clear precedent for the validity of separate allocations from separate funds.

Logic and Fundamental Fairness

The Networks seek to blur the 12¢ superstation and 3¢ network/public television station categories and commingle the royalty payments for an obvious reason—it is the only way they can tap into the larger stream of revenues from superstations and avoid the reality that the Networks seek a share of royalties: (i) They did not earn; (ii) based on programs they did not furnish; (iii) paid for stations that did

not carry their programming. Payment to the Networks from a fund which categorically, demonstrably, and unambiguously excludes any network-owned programming is neither logical nor fair. Not only would the Networks receive royalties for which they were not eligible and to which they were not entitled, but, because it is a zero-sum game within each category, the other program owners would be deprived of royalties to which they were entitled.

Moreover, having gained eligibility for royalty payment, the Networks are now trying to get through indirection from the Tribunal what they could not get—or did not seek—through direction from Congress—parity with the copyright owners which furnish programming to superstations. But their effort to seek a subsidy from the owners of programming furnished to superstations is misguided. The Networks' opportunity for increased revenues lies not in this Phase I proceeding, but in a legislative or rate-setting proceeding.

In fact, a one-category-royalty fund for the distribution of royalties paid by satellite carriers would not only enable the Networks to achieve virtual parity, it would give them a practical competitive advantage over other program owners. Initially, in negotiating with a satellite carrier, the Networks could emphasize the low (3¢/sub) cost of carrying a network station vis-a-vis the higher (12¢/sub) cost of carrying a superstation. Subsequently, having gained entry and widespread carriage due to a cost advantage of almost 400%, the Networks could ask the Tribunal for a substantial allocation of royalties from the pool which includes the more expensive superstation programming. This is analogous to buying a general admission ticket to the bleachers, then demanding to be seated in the reserved admission section behind home plate.

In order to minimize the possibility of over- or underpayment to the owner of copyrighted programming appearing on stations distributed by the satellite carriers, we have divided satellite carrier royalties into separate funds. Accordingly, copyright owners may only receive royalties paid into a fund for the retransmission of stations which, in fact, carried their programming.

Wherefore, in view of the foregoing, and the fact that all of the copyright owners, except the Networks, have negotiated a settlement, the Tribunal finds that one Phase I controversy exists between Certain Copyright Owners and the Networks.

With regard to Certain Copyright Owners' request for partial distribution the Tribunal invites the parties to file

²¹ 1991 Satellite Carrier Rate Adjustment Proceeding, 57 FR at 19052.

comments on the motion no later than December 15, 1992.

Dated: December 4, 1992.

Cindy Daub,
Chairman.

Commissioner Edward J. Damich,
dissenting

I respectfully dissent from the order of the Copyright Royalty Tribunal ("the Tribunal") in the 1989-91 Satellite Carrier Distribution Proceeding mandating separate funds¹ for royalty distribution purposes and ordering that "copyright owners may only receive royalties paid into a fund for the retransmission of stations which in fact carried their programming."²

Section 119 of the copyright Act requires satellite carriers to pay by station type: 12 cents for each secondary transmission of a superstation and 3 cents for each secondary transmission of a network station.³ At this stage in the 1989-91 distribution, the Tribunal effectively establishes two funds, one consisting exclusively of the fees paid in for superstation carriage (Superstation Fund) and another consisting of the fees paid in exclusively for network station carriage (Network Fund).⁴ Program owners are only entitled to receive royalties out of a fund if their programs were carried by the type of station for which royalties were paid into the fund. Thus, if a program was carried only on network stations, then it would only receive royalties from the Network Fund. In adopting this scheme, the Tribunal limits the amount to be paid out in royalty distribution by the fees paid in. This pay-in/pay-out approach is illogical, contrary to fundamental fairness, and contrary to Tribunal precedent.

I. Logic

It simply does not follow logically that because Congress set different pay-

in rates depending on station type that it intended distribution to follow the same pattern. Neither with satellite nor with cable did Congress establish detailed criteria to guide the Tribunal in distributing royalties;⁵ the Committee Report for the Satellite Home Viewer Act (SHVA) however, states that the Tribunal "should * * * take into account its royalty distribution determinations under the section 111 cable compulsory license."⁶ Regarding the cable compulsory license, the Committee Report for the Copyright Act of 1976 states:

[I]t would not be appropriate to specify particular, limiting standards for distribution. Rather the Copyright Royalty [Tribunal] should consider all pertinent data and considerations presented by the claimants.⁷

By contrast, Congress was quite particular in establishing the rates for both cable and satellite.⁸ Thus, it is clear that Congress did not expressly direct coordination between the pay-in scheme and the distribution scheme, and the contrast between the great attention that Congress paid to the pay-in scheme and the great latitude that it gave to the Tribunal on the distribution side implies, instead, that coordination was not a goal.

Furthermore, when one compares the criteria for rate-setting in satellite with the distribution factors identified by the Tribunal in cable (to which Congress has directed the Tribunal's attention as a model for satellite distribution), it is immediately apparent that rate-setting involves many concerns that are irrelevant to the principal goal of distribution, viz. program valuation.⁹ Thus, assuming that Congress followed its own criteria in setting the rates for

satellite, the disparity between the pay-in amounts, which were determined by significantly different criteria from those of distribution, will govern the total amounts available for distribution in the Superstation Fund and the Network Fund.

Finally, even if the differences in criteria are ignored, it is only common sense that determinations made *ex ante* can never be as precise as those made *ex post*. It would be odd indeed if Congress intended to predetermine program worth to a significant degree at a time when it could only "guesstimate," instead of allowing the Tribunal the advantage of making more precise determinations based on hard data. Indeed, in its first cable royalty distribution proceedings, the Tribunal flatly stated:

Because we find that the rate the cable systems pay under compulsory license is not a clear or true reflection of the direct marketplace value of the work, additional considerations, adjusted as appropriate, were used by the Tribunal to determine the marketplace value of the copyright owner's work.¹⁰

II. Fundamental Fairness

(1) The harm caused to copyright owners by secondary transmissions of copyrighted works by cable systems; (2) the benefit derived by cable systems from the secondary transmission of certain copyrighted works, and (3) the marketplace value of the works transmitted.

See 45 FR 63026, 63035 (1980).

The adoption of the pay-in/pay-out rule is unfair because it places an artificial cap on the valuation of programming carried on network stations, since the network Fund will normally be smaller than the Superstation Fund. If there is no division into funds, the Tribunal would receive evidence of the value of programming and divide up the money available for distribution (Basic Satellite Fund) according to its determination of the relative worth of all programming subject to the compulsory license. The only constraint on the Tribunal would be the amount of the Basic Satellite Funds, i.e. the total monies available for distribution under this compulsory license. Thus, the Tribunal would be free to follow the evidence of the value of programming carried solely on network stations wherever it leads, even if it leads to an award that is greater

¹ See 17 U.S.C. 801(b)(3) (1991).

² H.R. Rep. No. 887, 100 Cong. 2d Sess., part 1, at 23 (1988).

³ H.R. Rep. No. 1476, 94th Cong., 2d Sess., at 97 (1976).

⁴ See 17 U.S.C. 111(d); 801(b)(2) (1991); 119(c)(3)(D).

⁵ The factors for determining royalty fees for satellite are as follows:

(1) The approximate average cost to a cable system for the right to secondarily transmit to the public a primary transmission made by a broadcast station; (2) the fee established under any voluntary agreement; (3) the last fee proposed by the parties prior to arbitration; (4) maximizing the availability of creative works to the public; (5) affording the copyright owner a fair return and the copyright user a fair income under existing economic conditions; (6) the relative roles of the copyright owner and user with respect to creative contribution, technological contribution, capital investment, cost, risk, and opening of new markets for creative expression and media for their communication; and (7) minimizing any disruptive impact on the structure of the industries involved and on generally prevailing industry practices.

See 17 U.S.C. 119(c)(3)(D) (1991). The primary factors for determining distribution for cable are as follows:

¹ Copyright Royalty Tribunal Decision and Order at 25 (12/4/92).

² *Id.*

³ 17 U.S.C. 119(b)(1)(B) (i) & (ii) (1991).

⁴ At this stage in the proceeding, programs owned by public television are not included because of prior settlement. For 1993 and 1994, the Tribunal has established three separate rates: (1) For independent stations (17.5 cents), (2) for independent stations that are syndex-proof (14 cents), and (3) for network stations and noncommercial education stations (8 cents). 37 CFR 310.3 (1992). (In the 1993-94 rate adjustment order, the Tribunal did not explain why it used "independent station" when section 119 and the arbitration panel use only "superstation." It appears that the Tribunal was using "independent" station and "superstation" interchangeably.) The rates effective for the period of this distribution (1989-91) were divided by Congress into "superstations" and "network" stations; therefore, both the Tribunal and I have adopted this usage in this decision and order. 17 U.S.C. 119(b)(1)(B) (1991).

¹⁰ 45 FR, at 63028. Although this statement implies that there is some role for pay-in rates, there is no discussion of what role they play, and in any event they surely did not play the dramatic role assigned to them by the Tribunal in today's Decision and Order.

than the monies paid in for carriage of network stations (Network Fund).

However, if a program were carried only on network stations, the distribution scheme mandated by the Tribunal, would require it to disregard the evidence of the value of programming when that evidence pointed to an award that would exceed the total of the Network Fund, when the total of the Network Fund, as I have shown above, was determined by criteria different from that of program valuation. The Joint Network Parties ("the Networks") make this point in another way in their brief: "(A) first run episode of Roseanne on ABC would, before any (Tribunal) factors could be applied, be worth only a fourth as much as a 4-year-old Roseanne rerun on a superstation."¹¹ Clearly, the establishment of one Basic Satellite Fund Comports more closely with the Tribunal's stated goal of "simulat[ing] market valuation."¹² in distribution proceedings.

III. Precedent

The rejection of pay-in/pay-out is firmly rooted in Tribunal precedent. As has been noted above, the legislative history of the SHVA directs the Tribunal to take into account its royalty distribution determinations under the cable compulsory license.¹³ In its first cable distribution proceeding, the Tribunal made distributions from one fund, consisting of all the monies paid in for cable retransmission despite the fact that the pay-in rates varied according to whether the cable system was retransmitting an independent station on the one hand or a noncommercial educational or network station on the other.

In that same proceeding, the Motion Picture Association of America (MPAA) argued that programming should be evaluated by a time-plus-fee-generated method, i.e. that programming should be evaluated on the basis of the amount of time programs were carried plus their value to cable systems. The MPAA determined the value of the programs to the cable systems according to the value that Congress assigned to the types of signals carried by cable systems for calculating the rates to be paid in for retransmission—in other words, according to the fees generated. The

Tribunal noted that the MPAA's formula "would base the 'pay out' of royalties on the 'pay in' "¹⁴ and rejected it in favor of a combination of factors.

The Tribunal has also rejected pay-in/pay-out in the satellite context. In its 1991 declaratory ruling the Tribunal rejected the argument that network programmers could not share in the satellite royalty distribution because of the structure of the pay-in scheme adopted by Congress. In accepting *arguendo* that its decision would result in illogical distributions, the Tribunal declared this to be irrelevant and pointed to its experience with cable distributions: "In the cable license there exists other disparities, because the pay-in does not correlate by statute to the pay-out."¹⁵ In the 1991 Satellite Carrier Rate Adjustment Proceeding, the Tribunal stated: "[I]n cable and in satellite, the pay-in may not necessarily correlate to the pay-out."¹⁶

The Tribunal and the Certain Copyright Owners (CCO) make much of the Tribunal's decision to establish three funds for the distribution of cable royalties for 1983, but this was done in response to special circumstances that have no parallel in satellite distribution. Prior to the 1983 distribution, the Tribunal had created two new rates in response to the Federal Communications Commission's (FCC) elimination of its distant signal rules and its syndicated program exclusivity rules. The Copyright Act permitted the Tribunal to establish these new rates, but, significantly, the Act required that the new rates must apply only to the signals affected by the FCC's change.¹⁷ Thus, the Tribunal established the 3.75 rate and the Syndex rate as add-ons to the basic cable rate.

In its 1983 cable distribution, the Tribunal divided the cable royalties into three separate funds: The Basic Cable Fund, the 3.75 Fund, and the Syndex

Fund. In approving the division into three funds, the U.S. Court of Appeals for the Second Circuit stated:

[T]he establishment of the 3.75% and syndex royalty rates made new distribution criteria imperative. Certain claimants are, in fact, ineligible to receive royalties at the new rates, and distribution of royalties from a single fund would require complex adjustments.¹⁸

The decision of the Tribunal and the statement of the court must be understood in the context of the Copyright Act's requirement that the 3.75 and syndex rates would apply only to affected signals. Since Congress was so concerned that the new rate apply only to affected signals, it is reasonable to assume, as did the Tribunal and the court, that Congress also required that the proceeds derived from these rates be kept separate.

It is clear from the structure of the Copyright Act that the 3.75 and syndex rates (and therefore their corresponding distribution funds) are exceptions to the general distribution scheme reflected in the Basic Cable Fund, which is not subdivided into separate funds corresponding to different pay-in-rates according to station type. Nothing in the Copyright Act pertaining to the satellite compulsory license in any way resembles the special treatment afforded the 3.75 and Syndex Funds. Thus, the proper analogy for satellite distribution is the Basic Cable Fund, not the eccentric 3.75 and Syndex Funds.

IV. Eligibility

In an attempt to account for the Tribunal's consistent rejection of pay-in/pay-out, the Tribunal and the CCO seek to distinguish "eligibility" from program valuation. A programmer is "eligible" to share in royalties for a fund only if his or her program was carried on a station for which royalties were paid into the fund. Once beyond this threshold, pay-in/pay-out is not determinative.

There is a surface appeal to the argument that it is "unfair" for a programmer to have a share of monies that derive from fees for the retransmission of stations that did not carry his or her programs, but it is only "unfair" if the rate that satellite carriers pay in calibrated to represent the value of the programs that they retransmit. In fact, in setting the pay-in rates, Congress did not set out to approximate what programs are worth, but instead, set rates by station type according to a host of factors that are unrelated to the actual value of the programs carried. It cannot be said that satellite carriers are paying

¹⁴ 45 FR. at 63028.

¹⁵ 56 FR 20414, 20415 (1991).

¹⁶ 57 FR 19052 (1992).

¹⁷ The 3.75 rate was established to account for the carriage of additional distant signals pursuant to a change in FCC rules. In authorizing rate changes pursuant to such a change, the Copyright Act provides that the new rate cannot apply to distant signals already carried:

[N]o adjustment in royalty rates shall be made under this subclause with respect to any distant signal equivalent or fraction thereof represented by . . . carriage of any signal permitted under the rules and regulations of the (FCC) in effect on April 15, 1976 (the enactment date of the Copyright Act).

17 U.S.C. 801(b)(2)(B) (1991). Regarding the Syndex rate change, the Copyright Act provides that "any such adjustment shall apply only to the affected television broadcast signals carried on those systems affected by the change." *Id.* Section 801(b)(2)(C). See also "distant signal equivalent," *Id.* Section 111(f) (1991).

¹¹ Brief of the Joint Network Parties at 5-6.

(Programs carried on network stations are worth only one fourth of programs carried on superstations because the rate in effect for the period relevant for this proceeding was a 12 cent pay in for superstations and a 3 cent pay in for network stations.)

¹² 45 FR., at 63036.

¹³ *Supra* n.6.

¹⁸ *NAB v. CRT*, 809 F.2d 172, 178 (2d Cir. 1986).

the Congressionally-determined price of the programs carried on superstations such that if a network programmer whose programs are not carried on superstations is compensated from the Superstation Fund that he or she is being paid for something he or she did not provide. In paying the statutory rates for the carriage of superstations, satellite carriers are simply not "buying" the programs carried on those stations in the ordinary sense of that word; they are creating a Basic Satellite Fund from which programmers are to be paid according to the fair market value of their programs as determined by the Tribunal.¹⁹

"Eligibility" is a clever device to rationalize what is nothing more than prejudging program value according to inappropriate criteria. As has been pointed out, if division into funds depending on station type is adopted,

¹⁹ The Tribunal implies that it has never "allocated royalties to a copyright owner from within a fund comprised of royalties paid for stations which never carried any of the copyright owner's works." Decision and Order, at 22. First, the fact that it has never done so does not mean that it has adopted a rule to that effect. Second, the Tribunal admits that it is difficult and perhaps impossible to trace the pay-in to the pay-out in the Basic Cable Fund. *Id.*, at 20-21. Third, the Tribunal followed this practice in the 3.75 and Syndex Funds because Congress required that the rates be separate from the basic cable rates. *Supra*, n. 17.

there is a profound affect on the value of programming that is carried on network stations since the pay-in for the Network Fund is so much smaller than that for the Superstation Fund. Programs confined to the Network Fund are handicapped: 25% of \$5 million will always be more than 100% of \$1 million. That is why "eligibility" should be rejected—it skews the process of program valuation that is committed to the Tribunal. The real issue is program valuation, not "eligibility."

The Tribunal also fails to address the full implications on cable distribution of adopting pay-in/pay-out as a general rule for satellite distribution. Pay-in/pay-out was formerly applicable only to the exceptional 3.75 and Syndex Funds in cable distribution, but if it is the general rule for satellite distribution, why not for the Basic Cable Fund as well? The Tribunal's new rule of thumb is that it will create separate funds according to the type of station retransmitted and only program owners whose programs were carried on that type of station will be eligible to share in the royalties paid in for that type of station. Thus, in cable distribution, if it is possible to identify the amounts paid in for retransmission of noncommercial educational stations, it is consistent with the general rule that the Tribunal

has adopted today to argue that programmers whose programs are carried only on noncommercial educational stations are confined to a "Noncommercial Educational Fund."²⁰

In conclusion, the Tribunal's adoption of a pay-in/pay-out rule to govern satellite royalty distribution is unjustified because:

1. It illogically allows rate categories based on one set of criteria to constrain royalty distribution based on different criteria.

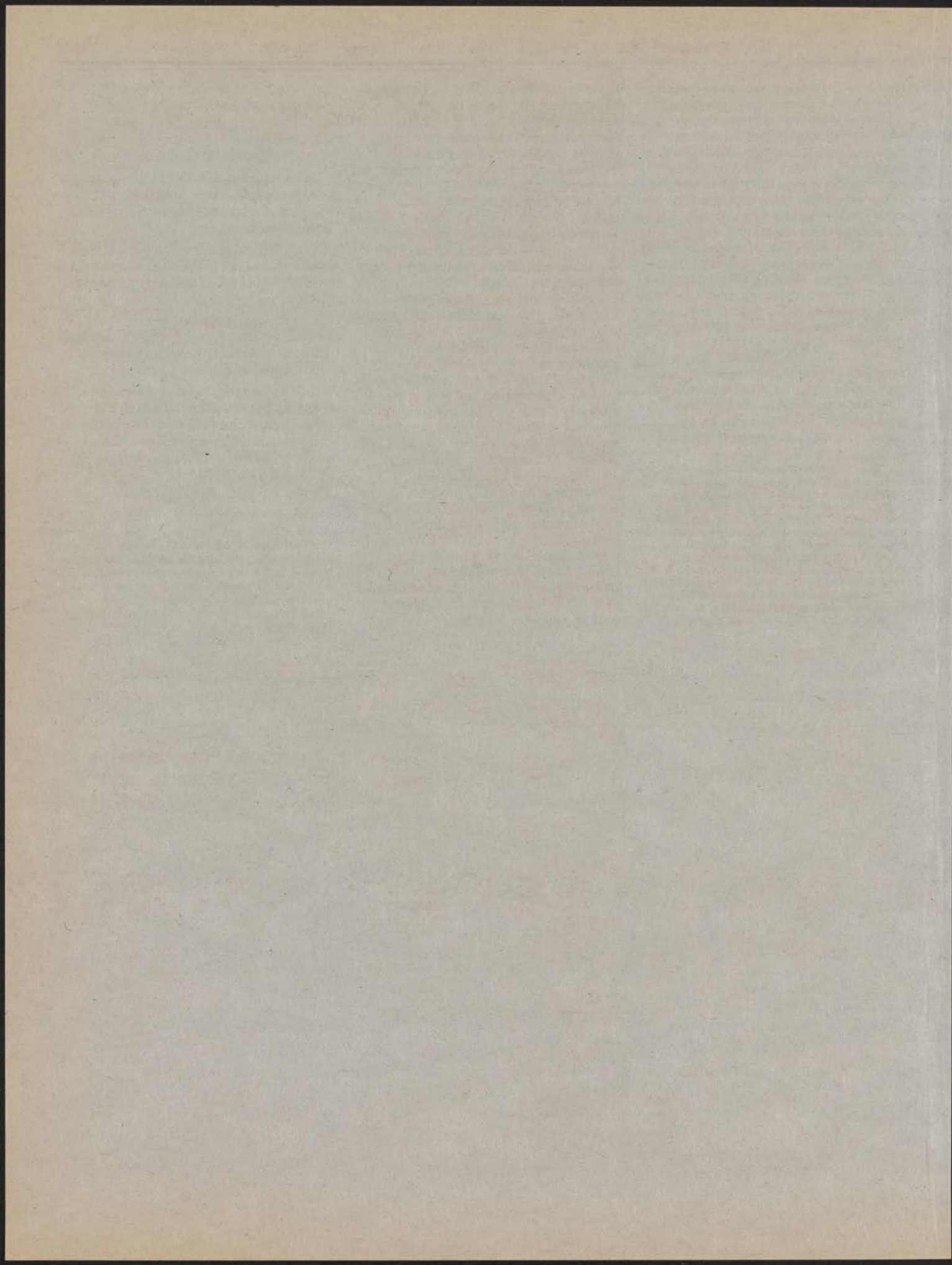
2. It unfairly prevents the determination of real program value by artificially limiting program valuation to percentages of discreet funds.

3. It disregards its many precedents rejecting pay-in/pay-out in both the cable and satellite contexts and makes a general rule out of a practice hitherto confined to exceptional circumstances (3.75 and Syndex Funds).

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²⁰ The Networks and the CCO differ on whether it is possible to determine the pay-in by station type in cable. In the 1989 Cable Distribution Final Determination, however, the Tribunal stated that, regarding noncommercial television, "[f]ees generated declined from 2.4% to 2%." 57 FR 15286, 15303 (1992).



Test Report Federal Pell Grant

Wednesday
December 30, 1992

Part III

Department of Education

Pell Grant Program: Deadline Dates for
Receipt of Applications, Reports, and
Other Documents for the 1992-93 Award
Year; Notice

DEPARTMENT OF EDUCATION

Pell Grant Program: Deadline Dates for Receipt of Applications, Reports, and Other Documents for the 1992-93 Award Year

AGENCY: Department of Education.

ACTION: Notice.

SUMMARY: The Secretary announces the deadline dates for receiving documents from persons applying for financial assistance under, and from institutions participating in, the Pell Grant Program during the 1992-93 award year.

SUPPLEMENTARY INFORMATION: The Pell Grant Program provides grants to students attending eligible institutions of higher education to help them pay for their education costs. The program supports AMERICA 2000, the President's strategy for moving the Nation toward the National Education Goals, by enhancing opportunities for postsecondary education. The National Education Goals call for increasing the rate at which students graduate from high school and pursue high quality postsecondary education and for supporting life-long learning. Authority for the Pell Grant Program is contained in sections 411 through 411F of the Higher Education Act of 1965, as amended (HEA), 20 U.S.C. 1070a through 1070a-6, as those sections read prior to enactment of the Higher Education Amendments of 1992, Public Law 102-325. The regulations for the Pell Grant Program are codified in 34 CFR part 690 and 34 CFR part 668.

I. Applications for Determination of Pell Grant Index—Table I

As a requirement for receiving a Pell Grant, each applicant is responsible for submitting to an institution of higher education a valid Student Aid Report (SAR) that states the amount of the student's Pell Grant Index (PGI) and the information used in calculating that number. To receive an SAR and determination of Pell Grant eligibility, each applicant must first submit his or her approved application to an agency listed in Table I of this notice or electronically through Stage Zero of the U.S. Department of Education's (Department of Education) Electronic Data Exchange (EDE) program, as discussed below. That application, hereafter referred to in this notice as an original application, must be submitted on one of the approved forms shown in Table I or through Stage Zero of EDE and be received by the designated agency at the agency's address shown in Table I no later than May 3, 1993.

Application forms sent to the Federal Student Aid Programs must be received at the appropriate U.S. Postal Service facility indicated in the table. Individuals at the application processing centers are not authorized to personally accept hand delivered documents.

Stage Zero of EDE allows institutions to enter (or have their students enter) Federal student financial aid application data by using software provided by the Department of Education. Institutions electronically transmit that data to the Department of Education. Stage Zero applications must be received at the Department of Education's Central Processing System center no later than midnight (Central Time) on May 3, 1993.

A. Applications of Students Receiving a "Dependency Override"

If the financial aid administrator (FAA) at the institution an applicant is attending determines that the applicant qualifies as an independent student under section 411F(12)(B)(vii) of the HEA or that he or she qualifies as a dependent student under section 411F(12)(C) of the HEA (as those sections read prior to enactment of the Higher Education Amendments of 1992, Pub.L. 102-325), the financial aid administrator will use the "dependency override" procedure. Under this procedure, the applicant must submit a Correction Application to the Federal Student Aid Programs after that application has been specially coded for the type of dependency override and signed by the FAA. However, the Correction Application is not the only means for submitting dependency status overrides. An FAA can request an override with the original application through most Multiple Data Entry (MDE) agencies. The interested FAA should contact the MDE agency used by the school (listed in Table I) to find out whether the MDE agency can process the dependency override through their system, and what procedures to follow in requesting the override. An applicant attending an institution that participates in Stage Zero of EDE and who qualifies for a dependency override may submit an electronic Correction Application coded for the appropriate dependency override through the Stage Zero process.

If the applicant has not submitted an original application, the deadline date for the submission of a Correction Application through the dependency override procedure is May 3, 1993. If the applicant has submitted an original application, the deadline date for the submission of the Correction Application is August 2, 1993.

Applications submitted electronically must be received no later than midnight (Central Time) of the applicable deadline date.

B. Applications of Students Meeting a "Special Condition"

If an applicant meets a "special condition" as provided in 34 CFR 690.31 or 690.32, the FAA will use the special condition procedure for the Correction Application. Under the special condition procedure, the applicant may provide the needed information on a Correction Application that has been specially coded and signed by the FAA.

If an applicant meets a special condition and his or her institution is participating in Stage Zero, the applicant may also submit an electronic Correction Application coded for the appropriate special condition through Stage Zero to the Department of Education's Central Processing System center. Applications submitted electronically must be received no later than midnight (Central Time) of the applicable deadline.

If the applicant has not submitted an original application, the deadline date for the submission of the special condition Correction Application is May 3, 1993. If the applicant has submitted an original application, the deadline date for the submission of the special condition Correction Application is August 2, 1993.

(Approved by the Office of Management and Budget under OMB Control Number Application: 1840-0110)

II. Other Documents—Table I

Once an applicant has filed his or her original application, additional transactions may occur. In some cases, the agency receiving the original application may request additional information. In other cases, the applicant is responsible for initiating a request to the agency to consider additional or alternative information.

Table I of this notice lists the addresses to which additional transactions must be sent and the deadline dates for the receipt of those transactions.

The following explains each type of transaction:

A. Correction Application

In addition to being used when an applicant receives a dependency override or meets a special condition as provided in 34 CFR 690.31 and 690.32, the Secretary will provide a Correction Application to an applicant if the applicant's original application lacked sufficient information to be processed or

contained inaccurate information. The applicant must include on the Correction Application all the information necessary to process that application.

If an applicant has misreported his or her dependency status, or if that status has changed after the applicant submitted an original application for reasons other than a change in marital status, the applicant must submit a Correction Application with the correct dependency status.

A Correction Application may be obtained (1) from an FAA or an Educational Opportunity Center counselor, (2) by writing to Federal Student Aid Programs, P.O. Box 84, Washington, DC, 20044, or (3) by calling 1 (800) 4 FED AID. The Correction Application must be returned to the address listed in Table I and received at that address no later than August 2, 1993, unless the Correction Application is submitted as an original application, in which case the May 3, 1993 deadline applies. A Correction Application submitted electronically through Stage Zero must be received by the Central Processing System center no later than midnight (Central Time) on August 2, 1993, unless the Correction Application is submitted as an original application, in which case the May 3, 1993 (midnight Central Time) deadline applies.

B. Student Aid Report (SAR)

• **Correction/Verification of Information Requested by the Secretary**—If the Secretary returns an SAR to an applicant for correction or verification of information, the applicant must correct or verify the information and return the SAR to the appropriate address listed in Table I. The SAR must be received at that address no later than August 2, 1993. An applicant who must correct or verify his or her data and who is attending an institution participating in EDE must have the institution submit his or her corrected or verified data to the Central Processing System center. The corrected SAR data submitted electronically by the institution must be received at the Central Processing System center no later than midnight (Central Time) on August 2, 1993.

• **Correction of Inaccurate Information**—If the SAR reflects information that was inaccurate when the application was signed, the applicant must correct that information on the SAR and send the SAR to the appropriate address listed in Table I. The SAR must be received at that address no later than August 2, 1993. Under EDE, an applicant must submit

that SAR, with the information corrected, to the institution by August 2, 1993.

• **Recomputation of Pell Grant Index (PGI)**—An applicant may request on the SAR that the Secretary recompute his or her PGI if: (1) The student believes a clerical or arithmetic error has occurred or (2) the student meets a special condition as provided in 34 CFR 690.31 or 690.32. The applicant must send the SAR to the appropriate address listed in Table I. The SAR must be received no later than midnight (Central Time) on August 2, 1993. A student attending an institution participating in EDE may submit a request for recomputation to the institution by August 2, 1993. A request for recomputation submitted electronically by the institution must be received at the Department of Education's Central Processing System center no later than midnight (Central Time) on August 2, 1993.

• **Request for Duplicate SAR**—If an applicant wishes to receive a duplicate SAR, the applicant may write to the appropriate agency's address listed in Table I or call the appropriate agency's telephone number listed in Table I. All written and telephone requests must be received no later than August 2, 1993. A written request sent to the appropriate agency (listed in Table I) must be received through a U.S. Postal facility. Individuals at the agencies listed in Table I are not authorized to personally accept hand-delivered documents.

Note—Although the Department of Education's application agencies will accept and process corrections through August 2, 1993, this deadline for corrections does not extend the deadline by which the student must submit his or her SAR with an eligible PGI to the institution's financial aid office. If the student does not submit a valid SAR with an eligible PGI to the financial aid office by his or her last date of enrollment or June 30, 1993, whichever is earlier, he or she will not be eligible for a Pell Grant award.

III. Verification Procedures and Deadline Dates

The information provided on an application and included on an SAR may be subject to verification. In that case, in order to receive a Pell Grant award for the 1992-93 award year, the applicant—and his or her parents, if applicable—must submit the necessary verification documents in accordance with the following procedures. The documents must be received no later than the deadline dates specified below. These dates do not conflict with nor supersede the deadline dates specified in Table I of this notice.

A. Verification of Information on Application

If an applicant is selected to have the information on his or her application verified under the verification procedures set forth in subpart E of the Student Assistance General Provisions (34 CFR part 668), he or she must submit the requested documents as specified below in steps 1-4. The deadline date for the completion of these steps is the earlier of 60 days from the applicant's last date of enrollment in the case of an applicant who leaves school because of graduation, completion of an academic term, or withdrawal; or August 30, 1993. (Documents that are hand-delivered must be received by the institution by the close of business on August 30, 1993. Documents sent by mail must be postmarked or demonstrate other comparable proof of mailing by August 30, 1993.) A student who will still be enrolled in a course of study in the 1992-93 award year after August 30, 1993, must submit the requested documents by August 30, 1993.

This process is complete when the applicant has:

- (1) Submitted all requested verification documents to his or her institution;
- (2) Made all necessary corrections on (a) Part 2 of the SAR, (b) an Electronic Student Aid Report (ESAR), or (c) a Correction Application of the EDE;
- (3) By August 2, 1993, either (a) signed and submitted the corrected Part 2 of the SAR to the appropriate address indicated on the back of Part 2 of the SAR (the same address as indicated in Table I); (b) signed and submitted the corrected ESAR to the institution (for those participating in EDE); or (c) signed and submitted the paper Correction Application or the electronic Correction Application.

(4) Submitted to the institution the corrected and reprocessed SAR or signed the corrected and reprocessed ESAR received from the Department of Education's processing center. (34 CFR 668.60)

B. Application Forms and Information

Student aid application forms, Correction Applications, and information brochures may be obtained through college and university financial aid administrators and Educational Opportunity Center counselors, or by writing or calling: Federal Student Aid Programs, P.O. Box 84, Washington, DC 20044. Telephone 1 (800) 4 FED AID.

TABLE I

[Deadline Date for Receipt of Original Application Forms for Determining Expected Family Contribution: May 3, 1993. Deadline Date for receipt of Correction Applications (other than originals), Applications (other than originals), and Other Documents: August 2, 1993]

Type of form	For information about	Contact Federal Student Aid Programs
Application for Federal Student Aid (AFSA).	English/Spanish/Correction Application request.	Box 84, Washington, DC 20044. 1-(800) 4 FED AID. TTY (301) 369-0518.
	English Application submission.	c/o AFSA Processor: Box 6950, Princeton, New Jersey 08541.
	Spanish Application submission.	Box 6951.
	Correction Application submission.	Box 6952.
	SAR corrections	Box 6953.
	Duplicate requests/address changes.	Box 6954.
	All other correspondence/inquiries.	Box 84, Washington, DC 20044. 1-(800) 4 FED AID.
Family Financial Statement (FFS).	Application request.	c/o American College Testing (ACT): Box 1002, Iowa City, Iowa 52243. (319) 333-1200.
	Application submission.	Box 1000.
	SAR corrections	Box 4018.
	Duplicate request/address changes.	Box 4017.
	All other correspondence/inquiries.	Box 4027.
Financial Aid Form (FAF).	Application request.	c/o College Scholarship Service: Box 6327, Princeton, New Jersey 08541. Eastern and Central Time Zones: (609) 951-1025. TTY (609) 734-9013.
	Application submission.	Box 6300.
	SAR corrections	Box 6957.
	Duplicate Request & Address Changes.	Box 6958.

TABLE I—Continued

[Deadline Date for Receipt of Original Application Forms for Determining Expected Family Contribution: May 3, 1993. Deadline Date for receipt of Correction Applications (other than originals), Applications (other than originals), and Other Documents: August 2, 1993]

Type of form	For information about	Contact Federal Student Aid Programs
Application for Pennsylvania State Grant and Federal Student Aid (PHEAA).	Application request and other inquiries.	c/o Pennsylvania Higher Education Assistance Agency (PHEAA): Grant Division, 660 Boas Street, Harrisburg, Pennsylvania 17102. 1-800-692-7435 (Pa. only) Out of state—(717) 257-2800.
Singlefile form ..	Application submission.	Box 8169, Harrisburg, PA 17105-8169.
	SAR corrections/duplicate requests/address changes.	Box 8135, Harrisburg, PA 17105-8135.
	Application request.	c/o United Student Aid Funds (USAF): Box 6131, MCB242, Indianapolis, Indiana 46206-6131. 1-(800) 448-3530.
	Application submission.	Box 6130, Indianapolis, IN 46206-6130.
(Federal Electronic Application) Stage Zero of the Electronic Data Exchange.	All other correspondence.	Box 6131, Indianapolis, IN 46206-6131.
	Application request.	Contact institution's financial aid office to find out if it participates in the Stage Zero project.
	Electronic Application submission.	Electronically submitted to the Central Processing System via General Electronic Support computer network.

TABLE I—Continued

[Deadline Date for Receipt of Original Application Forms for Determining Expected Family Contribution: May 3, 1993. Deadline Date for receipt of Correction Applications (other than originals), Applications (other than originals), and Other Documents: August 2, 1993]

Type of form	For information about	Contact Federal Student Aid Programs
Stage II of the Electronic Data Exchange.	Diskette and tape submission.	c/o National Computer Systems—Stage Zero, Box 30, Iowa City, Iowa 52244. (319) 339-6642.
	Electronic corrections and requests for duplicates/other inquiries.	c/o National Computer Systems—GES Customer Service, Iowa City, Iowa 52244. (319) 339-6642.

IV. Submissions to the Secretary of Institutional Payment

Summary and Student Aid Reports (Part 3 Payment Vouchers)

Each institution that participates in the Pell Grant Program is required by 34 CFR 690.83(b) to submit to the Secretary of Education reports and information required in connection with the Pell Grant funds made available to the institution for payment to students for an award year. One of the required reports is the Institutional Payment Summary (IPS). The IPS accompanies an institution's submission of Pell Grant Payment Vouchers and summarizes the information contained on the individual Payment Vouchers. Ordinarily, the Secretary provides an IPS form to the institution for completion and return to the Department of Education.

The institution may also meet this reporting requirement by submitting the IPS and Payment Voucher information to the Department of Education on a floppy disk, on a magnetic tape, or by an electronic transmission through a modem from a personal, mini, or mainframe computer. These submissions are referred to, respectively, as the Pell Grant Floppy Disk Data Exchange, the Pell Grant Recipient Data Exchange (RDE), and EDE Stage III. An institution that wishes to use one of these automated reporting methods must enter into a written agreement with the Department of Education and then must agree to (1) comply with the Department of Education's prescribed manner of formatting and presenting the submitted information, (2) restrict access to the records from which the IPS information

is derived, and (3) ensure that only authorized officials or agents of the institution may enter the data transmitted in or with the IPS submission to the Department of Education.

The Department of Education credits an institution's Pell Grant account on the basis of Pell Grant payment data submitted through the system described in this notice. Such information must be submitted to the Department of Education in a timely, certified, and acceptable form. A submission is timely if received by the Department of Education according to the deadlines prescribed in Tables II and III in Part IV.C. of this notice; certified if its accuracy is attested to by the institution in the manner described in Part IV.D. of this notice; and acceptable if submitted in accordance with the directions provided by the Department of Education for the particular medium of submission used by the institution.

Failure to meet these reporting requirements may result in administrative action by the Department of Education under subpart G of 34 CFR part 668 to fine the institution or to limit or terminate its participation in the Pell Grant Program. In addition, failure to report accurately a student's award amount by the reporting deadline may render the student ineligible for all or part of his or her Pell Grant payment.

A. Data and Records To Be Submitted

In each IPS submission, the institution must submit:

(1) On the IPS form, or in the IPS record format, information described in Section II of the IPS, including the number and amount of each Pell Grant award adjustment that the institution made and the institution's total payments to all Pell Grant recipients for the award year up to the date of the submission; and

(2) An SAR Payment Voucher (Part 3 of the SAR), or its equivalent as defined by the Secretary, that discloses—

(i) Any new Pell Grant recipients identified by the institution during the reporting period for which the IPS is submitted; or

(ii) Any change in enrollment status, cost of attendance, or other event that occurred during either the reporting period for which the IPS is submitted or the reporting period immediately preceding that reporting period, if that event causes a change in the amount of Pell Grant that a student has received or qualifies to receive for the award year.

The institution may submit the IPS without SAR Payment Vouchers (or electronic equivalent) if (1) the institution had no Pell Grant recipients

in attendance or identified no new Pell Grant recipients during the reporting period for which the IPS is submitted and (2) did not have to identify any changes to the awards of previously reported recipients during the reporting period preceding the period for which the IPS is submitted. If an institution that transmits IPS information via a floppy disk, RDE, or EDE Stage III wishes to exercise this option, it must use the paper IPS document.

[Approved by the Office of Management and Budget under OMB Control Numbers 1840-0132 (SAR) and 1840-0540 (IPS)]

B. Addresses for Delivery

The institution must submit the IPS and any accompanying SAR Payment Vouchers, or the floppy disk or the RDE magnetic tape containing this information, as follows:

If by regular mail: U.S. Department of Education, Pell Grant Systems Division, P.O. Box 4158, Iowa City, Iowa 52244-4158. If delivered by a courier other than the U.S. Postal Service: U.S. Department of Education, Pell Grant Systems Division, c/o National Computer Systems, 2510 N. Dodge St., Iowa City, Iowa 52240, Attention: CPS/DP.

C. Frequency and Schedules for IPS Submissions

An institution must make an IPS submission or its equivalent at least once during each of the reporting periods established in Tables II and III. The table that is applicable to a particular institution depends on the amount of the institution's 1991-92 Pell Grant authorization for the prior program year. An institution may make IPS submissions more frequently, up to 60 times during the entire reporting cycle (July 1st through the final reporting deadline). For purposes of complying with the reporting requirements of Part IV.A. of this notice, an institution must ensure that the IPS and SAR Payment Vouchers are received by the Department of Education by the applicable closing date for each reporting period as specified in the appropriate table below. Proof of mailing, such as a date on a U.S. Postal Service postmark, is not considered confirmation of receipt by the Department of Education. If an institution submits the IPS and SAR Payment Voucher information by means of the EDE Stage III, the transmission must be received at the Department of Education's Central Processing System center by midnight (Central Time) of the applicable closing date for the reporting periods indicated in Tables II and III.

TABLE II.—INSTITUTIONS WITH A 1991-92 PELL GRANT AUTHORIZATION OF AT LEAST \$750,000

Reporting periods	Closing date for receipt
July 1, 1992 through Oct. 15, 1992.	Oct. 15, 1992.
Oct. 16, 1992 through Dec. 15, 1992.	Dec. 15, 1992.
Dec. 16, 1992 through Feb. 15, 1993.	Feb. 15, 1993.
Feb. 16, 1993 through Apr. 15, 1993.	Apr. 15, 1993.
Apr. 16, 1993 through June 15, 1993.	June 15, 1993.
June 16, 1993 through Aug. 15, 1993.	Aug. 15, 1993.

TABLE III.—INSTITUTIONS WITH A 1991-92 PELL GRANT AUTHORIZATION OF LESS THAN \$750,000

Reporting periods	Closing date for receipt
July 1, 1992 through Dec. 15, 1992.	Dec. 15, 1992.
Dec. 16, 1992 through Apr. 15, 1993.	Apr. 15, 1993.
Apr. 16, 1993 through Aug. 15, 1993.	Aug. 15, 1993.

If any closing date for receipt above falls on a Saturday, Sunday, or Federal holiday, submissions received on the next Federal business day will be counted as meeting the closing date.

D. Certification of Accuracy

Institutions participating in the Pell Grant Program must provide a certification of the accuracy of the data with each IPS submission. An institution submitting an IPS form must certify by including an original signature by the official of the institution accountable for the accuracy of the data submitted. An institution transmitting IPS information by floppy disk, magnetic tape, or electronic transmission must certify the accuracy of the data by including in that transmission a code or signature flag prescribed by the Department of Education. By using the prescribed code or signature flag, an institution certifies that the transmitted IPS information has been provided from a file or record to which only officials with appropriate security clearance have access and that the data contained in the submission are accurate.

V. Annual Deadline for Submission of SAR Payment Vouchers and Requests for Adjustments of Pell Grant Accounts

An institution obtains an adjustment to its Pell Grant account, and the amount of Pell Grant funds for which it is accountable, by submitting supporting SAR Payment Vouchers or

their equivalent under the procedures described in this notice and the reporting system described in the regulations. An institution is required by 34 CFR 690.83(a) to submit all SAR Payment Vouchers for an award year by a specified date following that award year; for 1992-93 that date is September 30, 1993. An institution, therefore, may submit any Payment Vouchers not previously submitted during the required reporting periods established in this notice by September 30, 1993 and receive an adjustment to its Pell Grant authorization on the basis of that submission. Except as provided in Part V. B. of this notice, after September 30, 1993, the Secretary closes the institution's Pell Grant account for the 1992-93 award year. The institution's account is closed on the basis of the information reported by the institution on its submissions of IPS and supporting SAR Payment Vouchers through September 30, 1993. The final IPS submitted by the institution must accurately report the institution's total payments to all Pell Grant recipients for the 1992-93 award year (IPS Item 15 or its equivalent).

A. Timely Delivery for Final Submissions of SAR Payment Vouchers and Requests for Adjustments of Pell Grant Accounts: Proof of Delivery

An institution may be required by the Department of Education to show that it mailed or otherwise submitted its IPS and SAR Payment Vouchers by the September 30, 1993 deadline date.

The Department accepts as proof of the date of delivery by mail or by non-U.S. Postal Service courier one of the following:

- (1) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.
- (2) A legibly-dated U.S. Postal Service postmark.

Note—The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method of proof of mailing, an institution should check with the post office at which it mails its submission. An institution is strongly encouraged to use First Class Mail.

- (3) A dated shipping label, invoice, or receipt from a commercial courier.
- (4) Other proof of mailing or delivery acceptable to the Secretary.

The Department accepts hand deliveries at the address stated in part IV.B. between 8 a.m. and 4:30 p.m. Central Time on days other than Saturday, Sunday, or Federal holidays.

An institution that transmits IPS data and SAR Payment Voucher information electronically via the EDE Stage III must ensure that its transmission is

completed by midnight of the September 30, 1993 deadline date.

B. Postdeadline Adjustments to Pell Grant Accounts

Section 690.83(a) of the Pell Grant Program regulations provides for a timely closure of an institution's Pell Grant account for an award year solely on the basis of SAR Payment Vouchers or electronic equivalents delivered to the Department of Education by the annual deadline date, unless that closure would result in certain inaccuracies in the amount of an institution's Pell Grant account. In accordance with § 690.83(a), the Secretary permits a post-September 30, 1993 adjustment to the Pell Grant account of an institution for the 1992-93 award year or any prior award year in these two circumstances:

(1) *Underpayment of previously reported awards.* If the institution submitted in a timely manner a SAR Payment Voucher or electronic equivalent for a student in accordance with requirements of this notice and § 690.83(a) but did not submit in a timely manner and in an acceptable form a SAR Payment Voucher necessary to document the full amount of the award for which that student is eligible, the institution may receive a payment or reduction to account for the full amount of that award if—

- (i) The underpayment for that award is or would be at least \$100; and
- (ii) A program review or an audit report produced in accordance with the standards prescribed in 34 CFR 668.23(c) demonstrates to the satisfaction of the Secretary that the student was eligible to receive an amount greater than that reported on the SAR Payment Voucher submitted in a timely fashion to, and accepted by, the Department of Education.

(2) *Overawards of previously reported grants.* If the institution determines that a student on whose Pell Grant it had previously reported received more than the amount of Pell Grant funds for which he or she qualified, the institution may report the reduction in a student's Pell Grant award. The institution should not make such a report, however, for an overaward for which it is not liable under § 690.79(a) unless the student has repaid the entire overaward to the financial aid office.

The Secretary, in addition, makes allowances where the institution satisfactorily demonstrates that its failure to submit Payment Vouchers on a timely basis and have them accepted by the Department of Education was caused by a processing or administrative error made by the Department of

Education or one of its contractors or was due to unusual circumstances beyond the control of the institution.

Except as provided under 20 U.S.C. 1094(c)(7), and any regulations that may be issued under that section, the Secretary adjusts the Pell Grant account of an institution on the basis of student award data submissions made after September 30 following the award year only in these specified circumstances. Thus, if an institution submits SAR Payment Vouchers (or electronic equivalents) for the 1992-93 award year to the Department of Education after the September 30, 1993 deadline, the institution will not receive added Pell Grant funds from the Department of Education unless the institution can demonstrate that one of the prescribed conditions exists. If the institution does not demonstrate to the satisfaction of the Secretary the existence of one of these prescribed conditions, the institution, with respect to the amount not reported in a timely fashion, will receive no additional funds for that grant or grants and no reimbursement if the grant or grants were already made using institutional funds. Also the institution will remain liable for those Pell Grant funds received in advance that were used for that grant or grants.

Moreover, if the institution was required by § 690.79(a) to use institutional funds for Pell Grants to compensate for overawards for which it was accountable, the Secretary takes those required reimbursements into account in determining whether the institution qualifies for additional funds under the first exception described here.

If an institution believes that an adjustment is warranted on the basis of the conditions described here, it should contact the Pell Grant Program Financial Management Section at (202) 708-9807. If the institution seeks administrative relief on the basis of an administrative error by the Department of Education or its contractors, the institution's request must provide a complete description of all facts pertaining to the awards that were not credited, including each student's identifying data and full Pell Grant payment history. The request must be received by the Department of Education no later than January 31, 1994. The request must be delivered to: U.S. Department of Education, Pell Grant Systems Division, P.O. Box 23791, Washington, DC 20026-0791.

C. Request for Duplicate Payment Vouchers or Related Information

To receive a duplicate Payment Voucher, Processed Payment Voucher, or processed payment data, an institution must contact the Pell Grant

Program by calling (202) 708-9807 or by writing to: U.S. Department of Education, Pell Grant Systems Division, P.O. Box 23791, Washington, DC 20026-0791.

To receive a duplicate Payment Voucher, an institution must include with its request a photocopy of either part 1 or part 2 of that student's SAR or a photocopy of that student's ESAR. All requests must be received no later than August 2, 1993.

Applicable Regulations

The regulations applicable to this program are the Pell Grant Program

regulations in 34 CFR part 690 and the Student Assistance General Provisions regulations in 34 CFR part 668.

FOR FURTHER INFORMATION CONTACT: Michael Oliver, Program Specialist, Pell and State Grants Section, Grants Branch, Division of Policy Development, Policy, Training, and Analysis Service, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW. (ROB-3, room 4018), Washington, DC 20202-5447.

Telephone (202) 708-4607. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1 (800) 877-8339 (in Washington, DC

(202) 708-9300) between 8 a.m. and 7 p.m., Eastern time. (20 U.S.C. 1070a)

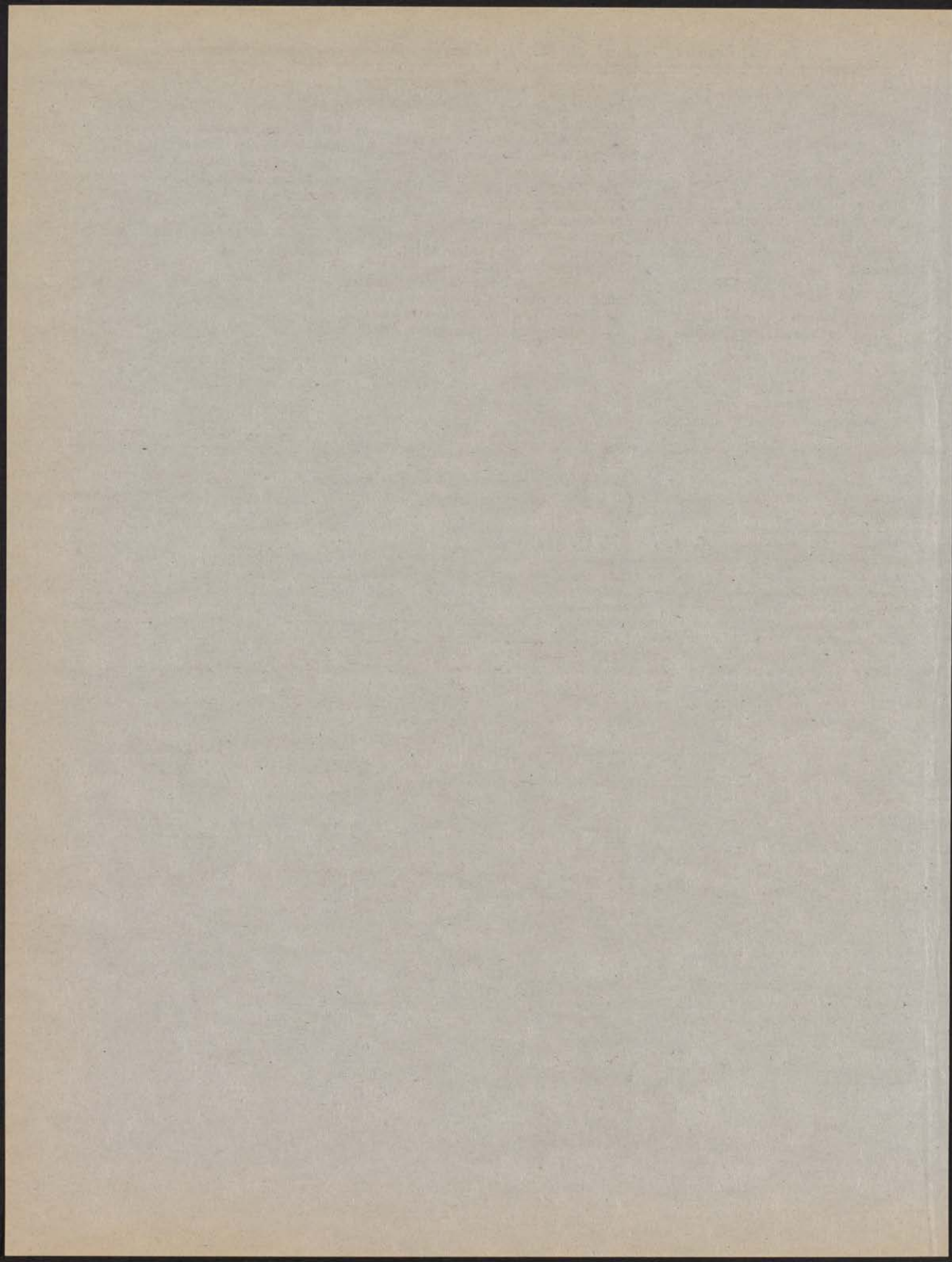
(Catalog of Federal Domestic Assistance No. 84.063, Pell Grant Program)

Dated: December 22, 1992.

Carolynn Reid-Wallace,
Assistant Secretary for Postsecondary Education.

[FR Doc. 92-31637 Filed 12-29-92; 8:45 am]

BILLING CODE 4000-01-MV



Guidelines To Assist Institutions in Determining Student Eligibility for Title IV; Notice

Wednesday
December 30, 1992

Part IV

Department of Education

Guidelines To Assist Institutions in
Determining Student Eligibility for Title
IV; Notice

DEPARTMENT OF EDUCATION

Guidelines To Assist Institutions In Determining Student Eligibility for Title IV, HEA Student Financial Assistance Programs, a Current Cumulative List of Approved "Ability-to-Benefit" Examinations, and Guidelines for the Interim Approval of Additional Examinations

AGENCY: Department of Education

ACTION: Notice.

SUMMARY: The Secretary provides guidelines for use in determining student eligibility for Federal student financial assistance under title IV of the Higher Education Act of 1965, as amended (HEA). In addition, the Secretary provides notice of the current cumulative list of approved "ability-to-benefit" examinations, and guidelines for the interim approval of additional "ability-to-benefit" examinations. The Secretary takes this action to provide interim nonbinding guidance to implement provisions contained in section 484(d) of the HEA as amended by the Higher Education Amendments of 1992 (Pub. L. 102-325, enacted July 23, 1992). In 1993, the Department of Education will be publishing a Notice of Proposed Rulemaking regarding this student eligibility requirement. Public comment will be solicited at that time.

FOR FURTHER INFORMATION CONTACT:

Cheryl Leibovitz, Senior Program Specialist, General Provisions and Institutional Eligibility Section, General Provisions Branch, Division of Policy Development, Policy, Training, and Analysis Service, U. S. Department of Education, 400 Maryland Avenue, SW., (Regional Office Building 3, room 4318), Washington, DC 20202-5343.

Telephone (202) 708-7888. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1-800-877-8339 (in the Washington, DC area, telephone (202) 708-9300) between 8 a.m. and 7 p.m., Eastern time.

SUPPLEMENTARY INFORMATION: Under section 484(d) of the HEA as amended by the Higher Education Amendments of 1992, a student who does not have a high school diploma or its recognized equivalent is eligible for Federal title IV student financial assistance only if—

- The student takes an independently administered examination and achieves a score specified by the Secretary, demonstrating that the student has the ability to benefit from the education or training being offered. The Secretary approves tests on the basis of compliance with standards for development, administration, and scoring as the Secretary may prescribe

in regulations. The student is not required to pass the examination prior to enrollment at the school; or

- The student is determined as having the ability to benefit from the education or training being offered in accordance with a process as prescribed by the State in which the school the student is attending is located. The State process shall be effective 6 months after it is submitted to the Secretary unless it is disapproved by the Secretary.

This provision does not apply to the Federal Supplemental Loans for Students (SLS) Program. Under the Federal SLS Program, a student must have a high school diploma or its recognized equivalent.

The purpose of this notice is to provide interim nonbinding guidance to institutions that helps implement the amended HEA, by providing a current list of approved examinations and an interim process for approving additional examinations until final regulations are issued. In addition, this notice contains guidelines for use in determining student eligibility for Title IV student financial assistance. The guidelines set forth the Department's general policies on these matters. Any binding requirements will be established through the promulgation of regulations.

On December 19, 1990, the Secretary published a notice in the *Federal Register* listing approved "ability-to-benefit" examinations and a process for obtaining approval of additional "ability-to-benefit" examinations. The purpose of that notice was to provide nonbinding guidance to implement the provisions of the Omnibus Reconciliation Act of 1990 (OBRA). This notice supersedes the December 19, 1990 notice.

Unless a publisher requests that approval of a test be withdrawn, the tests that have been listed in either the December 19, 1990 notice or subsequent Department of Education "Dear Colleague" letters as approved examinations for use in implementing the HEA will continue to be considered approved examinations for use in implementing the current HEA provisions until further notice or until such time as final regulations are published. The December 19, 1990 notice provided that test developers and publishers who wished to have their examinations approved by the Secretary should submit documents (as described in that notice) to the Department of Education by March 31, 1991. With publication of this notice, and until further notice, that March 31 deadline is extended indefinitely.

The Secretary does not require that an institution secure prior approval from

its accrediting agency before using an approved examination. However, there may be specific requirements regarding testing instruments that an accrediting agency may impose on its members. Institutions should check with their accrediting agencies for specific guidance.

To implement section 484(d) of the HEA, as amended by the Higher Education Amendments of 1992, the Department will publish a Notice of Proposed Rulemaking and final regulations. In the interim, as additional tests are approved by the Department, notification of their approval will be published in subsequent "Dear Colleague" letters and *Federal Register* notices. These examinations are approved on an interim basis until further notice or until such time as final regulations are issued. At that time, all tests, including those approved on an interim basis, will be reviewed in accordance with the regulations. In addition, the proposed and final regulations will address provisions in the Amendments authorizing State processes for the determination of a student's "ability-to-benefit."

I. Guidelines for Use in the Determination of Student Eligibility for Title IV, HEA Programs

Independently Administered

The Secretary considers an examination to be independently administered if it is administered in accordance with the procedures specified by the test publisher and approved by the Secretary. The test should be administered by an individual who, or organization that, has no current or prior fiscal interest in the institution to be attended by the student being tested other than an arms-length arrangement to administer the examination. However, the Secretary considers a testing or assessment center at a degree-granting institution or public vocational institution that is independent of the admissions and financial aid processes, to be able to administer examinations independently for students attending that institution if the primary purpose of the testing or assessment center is not to administer "ability-to-benefit" examinations.

Apart from the testing center exception described in the prior paragraph, a test administrator, proctor, or scorer (hereafter referred to as a test administrator) should not be a current or former employee, consultant, or student of the institution which the tested student is attending or planning to attend; should not be on the board of directors of, an owner of, or have a

financial interest in the institution; and should not be a relative of any of the above. With the exception of employees of those testing or assessment centers at degree-granting institutions or public vocational institutions, the Secretary does not consider an employee of one postsecondary institution to be sufficiently independent to administer tests to prospective students at another postsecondary institution. The Secretary considers that a testing or assessment center that is owned, controlled, or operated by a current or former owner of an institution, except an established testing or assessment center at a degree-granting institution or public vocational institution, cannot independently administer "ability-to-benefit" examinations for purposes of this notice to prospective students of that postsecondary institution.

The Secretary considers public and nonprofit centers that offer assessment or testing services and that operate independently of institutions that are eligible to participate (in the HEA programs) to be able to administer independently "ability-to-benefit" examinations to students unless the testing or assessment center is owned, controlled, or operated by a current or former owner of an institution.

To ensure that a record of an independently administered test is maintained, the institution is advised to keep a record of the test taken, the date and location of the test, test scores, and the individual who administered the test.

The Secretary encourages institutions to draw test administrators from any of the following sources, provided that they meet the criteria of independence listed above:

- High school guidance counselors.
- Qualified professional educators who, except as provided above, are not employees of a postsecondary institution.
- Staff of regional and area Armed Forces commands who are experts in education, training, or human resources development.
- Staff of established offices of testing or assessment who are independent of the admissions process at degree-granting institutions.
- Test and measurement experts.
- Human resource development professionals.

Guidelines for Selecting Examinations from the Secretary's List of Examinations Approved for Testing Students Who Do Not Have a High School Diploma or its Equivalent

Institutions may use more than one examination from the Secretary's list in

determining if students who do not have a high school diploma or its recognized equivalent are eligible to receive title IV student financial assistance. While different examinations from the Secretary's list may be used for students in different programs, the skills and abilities assessed by all of the examinations listed below assume students have had some secondary education. The examinations approved for testing students enrolled in English as a Second Language (ESL) programs or programs with an ESL component or for testing non-native speakers of English enrolling in regular academic or vocational programs taught in English, expect some degree of functional literacy in English for non-native speakers of English. Institutions are encouraged to consider the following in selecting examinations from the list of approved tests for those students:

1. Whether examinations designed for non-native-speakers of English can determine the degree of English language proficiency necessary to succeed in the students' programs of study.

A. Students whose native languages are not English and who are enrolled in an English as a Second Language (ESL) program or a program with an ESL component should take an examination on the Secretary's list that has been approved for determining the English language proficiency of non-native speakers of English enrolling in the programs described in this paragraph.

B. Students whose native languages are not English and who are enrolled in regular academic or vocational programs taught in English should take an examination on the Secretary's list that has been approved for determining the English language proficiency of non-native speakers of English enrolling in the programs described in this paragraph.

C. Students whose native languages are not English and who are studying entirely in their native languages should take an examination in their native languages if one is available and if it measures secondary-school level basic verbal and quantitative skills. An approved exam must be used for those languages for which examinations have been included on the Secretary's list.

2. Students with physical or mental disabilities should be provided with appropriate assistance in test-taking. In administering "ability-to-benefit" tests, the institution must ensure that, if a test is administered to a student who has a disability that impairs sensory, manual, cognitive, or language skills, the test results accurately reflect the student's aptitude or achievement level or related

cognitive skills or general learned abilities rather than reflecting the student's impaired sensory, manual, or speaking skills. The guidelines developed jointly by the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education, or the guidelines developed by the American Vocational Education Association, should be followed in test selection, administration, and interpretation.

II. Approved "Ability-to-Benefit" Examinations

Until further notice or until such time as final regulations are issued, the Secretary approves the following list of examinations to be used in implementing the requirement that students without a high school diploma or its recognized equivalent pass an examination approved by the Secretary to be eligible for assistance under the title IV HEA programs.

These examinations are nationally standardized examinations of secondary school level basic skills or general learned abilities that meet the statutory purpose underlying the requirement that the Secretary approve examinations. Interim guidelines for approving additional examinations are listed at the end of this notice.

The guidelines do not limit the Secretary's discretion in deciding whether to approve any examinations but do set forth the Secretary's general policies. A test in a language other than English only can be used if the program will be taught solely in that language. Results of a test only are considered to be valid if the test was (1) independently administered and (2) administered within the guidelines established by the test publisher and approved by the Secretary.

The Secretary, on an interim basis, hereby approves the following examinations for use in determining students' eligibility for title IV assistance (other than the Federal SLS Program).

1. ACT Assessment .. American College Testing (ACT),
2201 North Dodge
Street, P.O. Box
168, Iowa City, IA
52243, Contact:
Cynthia B.
Schmeiser, Tele-
phone: (319) 337-
1091.

2. *Adult Basic Learning Examination (ABLE)*, Level 3. The Psychological Corp., 555 Academic Court, San Antonio, TX 78204, Contact: Beverly Creek, Telephone: (512) 299-3665.
3. *APTICOM*. The Educational Skills Development Battery; and three (3) parts of the Aptitude Test Battery (Pattern Visuality, Numerical Reasoning, and Word Memory) which must be administered together. Vocational Research Institute, Suite 1502, 1528 Walnut Street, Philadelphia, PA 19102, Contact: Jeffrey Harris, Telephone: (800) 874-5387.
4. *Aptitude Based Career Decision Test (ABCD)*. Education Technologies, Inc., 1007 Whitehead Road Ext., Trenton, NJ 08638-2405, Contact: James Roberts, Telephone: (609) 882-2668.
5. *Armed Services Vocational Aptitude Battery (ASVAB)*. All forms. U.S. Military Enlistment Processing Command, Call for information concerning ASVAB test processing centers, Telephone: (708) 688-4922.
6. *Assessment and Placement Services (APS)*, (4 tests) Battery, Form B. The College Board, 45 Columbus Avenue, New York, NY 10023, Contact: Lucky J. Abernathy, Telephone: (212) 713-8057.
7. *ASSET*, Forms A, B, and C. American College Testing (ACT), 2201 North Dodge Street, P.O. Box 168, Iowa City, IA 52243, Contact: John Roth, Telephone: (319) 337-1030.
8. *Career Planning Program (CPP) Abilities Measurement*, Level 2. American College Testing (ACT), 2201 North Dodge Street, P.O. Box 168, Iowa City, IA 52243, Contact: Connie Brinton, Telephone: (319) 337-1037.
9. *Career Program Assessment Test (CPAT)*, Forms A and B. American College Testing (ACT), 2201 North Dodge Street, P.O. Box 168, Iowa City, IA 52243, Contact: John Roth, Telephone: (319) 337-1030.
10. *Comprehensive English Language Test for Learners of English (CELT)*, Forms A and B. Approved for testing non-native speakers of English entering programs taught in English. This test is appropriate for testing students enrolled in ESL programs or programs with ESL components. McGraw-Hill Book Co., 13955 Manchester Road, Manchester, MO 63011, Contact: Barbara Buchanan, Telephone: (800) 624-7294, ext. 2.
11. *Comprehensive Tests of Basic Skills*, Edition 4, Levels 19/20 and 21/22. California Testing Bureau (CTB), Macmillan/McGraw-Hill, School Publishing Co., 2500 Garden Road, Monterey, CA 93940, Contact: Jeffrey Eberle, Telephone: (800) 538-9547 or (408) 649-8400.
12. *Computerized Placement Test (CPT)*. The College Board, 45 Columbus Avenue, New York, NY 10023, Telephone: (212) 713-8000, Contact: Lucky J. Abernathy, Telephone: (212) 713-8057.
13. *Degrees of Reading Power*, Standard and Advanced Forms. Touchstone Applied Science Associates Inc., Fudde Lane, P.O. Box 382, Brewster, NY 10509, Contact: Stephen H. Ivens, Telephone: (914) 277-4900.
14. *Descriptive Tests of Language Skills (DTLS)*. Multiple Assessment Programs and Services (MAPS), The College Board, 45 Columbus Avenue, New York, NY 10023, Contact: Lucky J. Abernathy, Telephone: (212) 713-8057.
15. *Descriptive Tests of Mathematical Skills (DTMS)*. Multiple Assessment Programs and Services (MAPS), The College Board, 45 Columbus Avenue, New York, NY 10023, Contact: Lucky J. Abernathy, Telephone: (212) 713-8057.
16. *Differential Aptitude Test*, Forms V and W. The Psychological Corp., 555 Academic Court, San Antonio, TX 78204, Contact: Beverly Creek, Telephone: (512) 299-3665.
17. *ETS Tests of Applied Literacy Skills (TALS)*, Forms A and B. Educational Testing Service, P.O. Box 6155, Princeton, NJ 08541, Contact: Denyse Leslie, Telephone: (609) 734-1575, Ordering Materials: Kari Holleran, Simon and Schuster, Workplace Resources, Telephone: (800) 395-7042.
18. *Flanagan Industrial Tests*, Forms A and AA. Entire battery must be used. Science Research Associates (SRA), London House, 1550 Northwest Highway, Park Ridge, IL 60068, Contact: Michael Maddox, Telephone: (708) 298-7311.
19. *General Education Diploma Tests (GED)*. Contact the appropriate State Department of Education.
20. *IRCA Pre-Enrollment Appraisal: Comprehensive Adult Student Assessment System (CASAS)*. All four components must be used. Approved for testing students enrolling in ESL Programs. Comprehensive Adult Student Assessment System (CASAS), 2725 Congress St., Suite 1-M, San Diego, CA 92110, Contact: Linda Taylor, Telephone: (619) 298-4681.
21. *Job Training Assessment Program (JOBTAP)*. All four sections of this test must be given, i.e., Training and Work Manuals, Work Rules and Procedures, Follow-the-Rule Arithmetic, and Find-the-Rule. Workplace Assessment and Training Division, Educational Testing Service, 27 N. Rosedale Road, Princeton, NJ 08541, Contact: Robert Skopac, Customer Service Representative, Telephone: (800) 932-0022, or (609) 951-6082.
22. *Metropolitan Achievement Tests—MAT-6, Advanced 2, Basic Survey Battery*, Forms L and M. The Psychological Corp., 555 Academic Court, San Antonio, TX 78204, Contact: Beverly Creek, Telephone: (512) 280-3807.

23. *Nelson-Denny Reading Tests*, Forms E and F. Riverside Publishing Company, 8420 Bryn Mawr Avenue, Chicago, IL 60631, Contact: Donna Hesselbaum, Telephone: (800) 323-9540.
24. *P.A.R. Admissions Test*, Alternate Form English Version. Richard D. Irwin, Inc., 578 Arcade Avenue, Seekonk, MA 02771, Contact: Carol Long, Telephone: (800) 634-3961.
25. *P.A.R. Admissions Test*, Spanish Version. Approved for use if Spanish is both the student's native language and the language of instruction. Richard D. Irwin, Inc., 578 Arcade Avenue, Seekonk, MA 02771, Contact: Carol Long, Telephone: (800) 634-3961.
26. *Preliminary Scholastic Aptitude Test (PSAT)*. The College Board, 45 Columbus Avenue, New York, NY 10023, Contact: Arthur Doyle, Telephone: (212) 713-8060.
27. *Pruebas de Aprovechamiento Academico (PAA)*. Approved for use if Spanish is both the student's native language and the language of instruction*. The College Board, Call Box 71101, San Juan, PR 00936-1101, Contact: Manuel Maldonado-Rivera, Telephone: (809) 759-8625.
28. *Pruebas de Aprovechamiento Academico—English Section (ESLAT)*. Approved for use in testing students whose native language is Spanish if the language of instruction is English*. The College Board, Call Box 71101, San Juan, PR 00936-1101, Contact: Manuel Maldonado-Rivera, Telephone: (809) 759-8625.
29. *Pruebas de Aprovechamiento Academico—Spanish and Mathematics Section*. Approved for use if Spanish is both the student's language and the language of instruction, on the condition that both sections are given*. The College Board, Call Box 71101, San Juan, PR 00936-1101, Contact: Manuel Maldonado-Rivera, Telephone: (809) 759-8625.
30. *Prueba de Aptitud Academica*. Approved for use if Spanish is both the student's native language and the language of instruction. The College Board, Call Box 71101, San Juan, PR 00936-1101, Contact: Manuel Maldonado-Rivera, Telephone: (809) 759-8625.
31. *Scholastic Aptitude Test (SAT)*. The College Board, 45 Columbus Avenue, New York, NY 10023, Contact: Arthur Doyle, Telephone: (212) 713-8060.
32. *Secondary Level English Proficiency Test (SLEP)*, Forms 1, 2, and 3. Approved for non-native speakers of English entering programs in which English is the language of instruction or ESL programs or programs with ESL components. International Testing and Training Programs, Educational Testing Service, P.O. Box 6155, Princeton, NJ 08541-6155, Contact: Stella R. Cowell, Telephone: (609) 921-9000, To order/buy materials: ETS/SLEP, Order Service Section, LO2, P.O. Box 6158, Princeton, NJ 08541-6158, Telephone: (609) 771-7243.
33. *Spanish Assessment of Basic Education (SABE)*, Level 6. Approved for use if Spanish is both the student's native language and the language of instruction. California Testing Bureau, Macmillan/McGraw-Hill, School Publishing Co., 2500 Garden Road, Monterey, CA 93940, Contact: Jeffrey Eberle, Telephone: (800) 538-9547 or (408) 649-8400.
34. *Stanford Achievement Test, Abbreviated, Eighth Edition*, Form J, Task 1, 2, and 3, Complete and Basic Batteries. The Psychological Corp., 555 Academic Court, San Antonio, TX 78204, Contact: Beverly Creek, Telephone: (512) 280-3807.
35. *Stanford Test of Academic Skills*, 3rd Edition, Forms J and K, Levels 1, 2, and 3. The Psychological Corp., 555 Academic Court, San Antonio, TX 78204, Contact: Beverly Creek, Telephone: (512) 280-3807.
36. *Stanford Test of Academic Skills*, Second Edition, Forms E and F, Levels 1 and 2. The Psychological Corp., 555 Academic Court, San Antonio, TX 78204, Contact: Beverly Creek, Telephone: (512) 280-3807.
37. *Test of Adult Basic Education (TABE)*, Level A, Form 5 and 6. Both long and short versions. California Testing Bureau, Macmillan/McGraw-Hill, School Publishing Co., 2500 Garden Road, Monterey, CA 93940, Contact: Jeffrey Eberle, Telephone: (800) 538-9547 or (408) 649-8400.
38. *Test of Adult Basic Education (TABE)*, Level D, Forms 5 and 6. Both long and short versions. California Testing Bureau, Macmillan/McGraw-Hill, School Publishing Co., 2500 Garden Road, Monterey, CA 93940, Contact: Jeffrey Eberle, Telephone: (800) 538-9547 or (408) 649-8400.
39. *Test of English as a Foreign Language (TOEFL)*. Approved for non-native speakers of English enrolled in programs in which English is the language of instruction. International Testing and Training Programs, Educational Testing Service, P.O. Box 6155, Princeton, NJ 08541-6155, Contact: Stella R. Cowell, Telephone: (609) 921-9000 or (215) 750-8050.
40. *Wonderlic Personnel*, Forms I, II, APT, and EM. E.F. Wonderlic Personnel, Inc., 820 Frontage Road, Northfield, IL 60093, Contact: Fred Rafilson, Telephone: (800) 323-3742.
41. *Wonderlic Scholastic Level Exam*, Forms IV, V, T-51, and T-71. E.F. Wonderlic Personnel, Inc., 820 Frontage Road, Northfield, IL 60093, Contact: Fred Rafilson, Telephone: (800) 323-3742.
42. *Wonderlic Scholastic Level Exam (Spanish, Puerto Rican Spanish, Cuban Spanish, Mexican Spanish)*, Forms IV and V. Approved for use if Spanish is both the student's native language and the language of instruction. E.F. Wonderlic, Inc., 820 Frontage Road, Northfield, IL 60093, Contact: Fred Rafilson, Telephone: (800) 323-3742.
43. *Tests used by States for assessing the basic skills of all entering post-secondary students*. A test only can be used in the State in which it was approved for this purpose. Contact the appropriate State Department of Higher Education.

* The publisher of these tests has requested that approval for these tests be withdrawn. Therefore, effective 30 days after publication of this notice, these tests cannot be administered for the purpose of determining title IV student eligibility. However, if a student passed one of these exams within the 12 months immediately preceding the effective date of the test approval being withdrawn, a student may submit an official notification of his or her test score from one of these exams to the institution at which he or she is applying for assistance provided

that the student's application for Federal title IV student financial assistance is made within 12 months after the student received such a passing score. An institution may use this score for the purpose of determining title IV eligibility provided that the test was independently administered in accordance with the statute and the test administration procedures prescribed by the test publisher and approved by the Secretary.

Note: With respect to the above tests (including State tests), if the approved form of a test consists of more than one subtest, all subtests of that test must be given for the test to be considered eligible and a student must pass all subtests to be eligible for title IV student financial assistance.

A student who has taken one of the tests listed above within the 12 months immediately preceding his or her application for Federal title IV student financial assistance may submit an official notification of his or her test score to the institution at which he or she is applying for financial assistance. An institution may use this score provided that the test was independently administered in accordance with the statute and the test administration procedures prescribed by the test publisher and approved by the Secretary.

Standards for Passing Scores (Cut-Scores)

Except as provided below, on an interim basis until final regulations are promulgated, for an institution to comply with the requirement that students who do not have a high school diploma or its equivalent pass an independently administered examination approved by the Secretary to be eligible for title IV aid, the institution must use a passing score on the examination as determined by the test publisher and approved by the Secretary that is one full standard deviation below the mean for that examination. Information concerning the applicable passing scores can be obtained from the individual test publishers. Test publishers may establish different passing scores of one full standard deviation below the mean for normative groups based on type of institution (e.g. community colleges, vocational schools). It is not appropriate for an institution to set its own passing score or for a test publisher to set passing scores for any one particular institution or program within an institution.

The passing scores, which apply to all institutions, for the following tests will be as follows:

TOEFL—for which the passing score is 450.

SLEP—for which the passing score is the 50th percentile.

SABE—for which the passing score is two-thirds of a standard deviation below the mean.

Special Provisions for Students With Physical or Mental Disabilities

Specialized testing procedures or instruments that have been scientifically developed or modified specifically for the purpose of evaluating the ability of an individual with a disability to benefit from postsecondary training or education are considered to be eligible tests for purposes of compliance with the provisions of the HEA requiring testing of students for eligibility for title IV assistance. If a special testing procedure or instrument is used, the institution must document that the student has been determined to be disabled and unable to be evaluated by use of conventional examinations. Documentation of a student's disability may be a statement of a diagnosis made by a licensed psychologist or medical physician, as appropriate, or a record of a diagnosis by an institution that operates an elementary and secondary school program, or a classification by a State vocational rehabilitation services agency. Institutions using these specialized testing procedures or instruments must document that the test results accurately reflect the disabled student's aptitude or achievement level or related cognitive skills of general learned abilities, rather than reflecting the student's impaired sensory, manual, or speaking skills. The passing scores for these tests would be those recommended by the applicable test publishers and approved by the Secretary.

Special Provisions for Students Whose Native Languages Are Not English if Tests in Those Languages Have Not Been Individually Approved

On an interim basis, until final regulations are promulgated, if students whose native languages are not English are enrolled in an ESL program only, or are receiving all of their instruction in their native languages and there are no tests that have been individually approved in those native languages, the institution may use other tests or assessments it selects provided that:

- The test is not one that was rejected for approval by the Secretary;
- The test or assessment measures multiple skills and not a single skill;
- The protocols of test administration follow the guidelines in Section 13 ("Testing Linguistic Minorities") of the *Standards for Educational and Psychological Testing* of the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education; and

—The passing scores and the methods for determining those scores are fully documented. In cases in which the test or assessment is published, the passing score used should comply with the passing score standard previously described in this notice.

III. Guidelines for the Interim Approval of Additional Examinations

The Secretary hereby invites test publishers to submit examinations for review. The following criteria should be used solely for the purpose of preparing a test for submission and approval under these guidelines. The Secretary will propose a new standard, open to public comment, in a Notice of Proposed Rulemaking, and tests will need to be resubmitted under the new criteria once the final rule is in place. In the interim, the Secretary will consider approving additional examinations that—

1. Assess basic verbal and quantitative skills at the secondary-school level;
2. Meet the primary standards developed jointly by the American Educational Research Association, the American Psychological Association, and the National Council on Measurement in Education, as promulgated in the *Standards for Educational and Psychological Testing* (1985) and that are germane to testing students who do not have a high school diploma or its equivalent as required by section 484(d) of the HEA as amended;
3. Assess the ability, skills, or knowledge of students without a high school diploma or its equivalent who are seeking title IV Federal student financial assistance;
4. Are reliable enough to permit consistent judgments of individual ability, skill, or knowledge based on evidence provided by the test publisher;
5. Provide normative data that reflect levels of ability required to complete successfully postsecondary educational or occupational training programs; and
6. Provide normative samples that are of adequate size and representative of the contemporary post-compulsory school-age population in the United States to support conclusions regarding the use of the examinations in selecting students seeking Federal title IV student financial assistance.

Please Note: The Secretary encourages publishers to continue to develop suitable tests in languages other than English and for students with specific disabilities. The Secretary may provide publishers with a short-term provisional approval during the normative data collection and/or test validation process for these new instruments provided that the tests meet the basic standards for development used in the review and approval process.

Request for Review of Tests

Test developers and publishers who wish to have their examinations approved by the Secretary should submit five (5) copies of the following documents to the General Provisions and Institutional Eligibility Section, General Provisions Branch, Division of Policy Development, Policy, Training, and Analysis Service, U.S. Department of Education, 400 Maryland Avenue, SW. (room 4318, ROB-3), Washington, DC 20202-5343:

- Copy of the test;
- Test documentation and references;
- Technical manual containing the recommended procedures for the test's security, administration, and scoring; and
- History of the test's use.

Paperwork Reduction Act of 1980

This notice contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these requirements to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

This notice affects test publishers, postsecondary institutions, and students who do not have a high school diploma or its recognized equivalent and who want to apply for Federal title IV student financial assistance. Annual public reporting burden for this collection of information is estimated to average 6 minutes for each of the estimated 196,700 students who will provide these test results to their schools and 30 minutes for a publisher

for each of the estimated 50 tests that will be submitted for the Secretary's approval. This burden includes time for reviewing instructions.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

(20 U.S.C. 1091(d)).

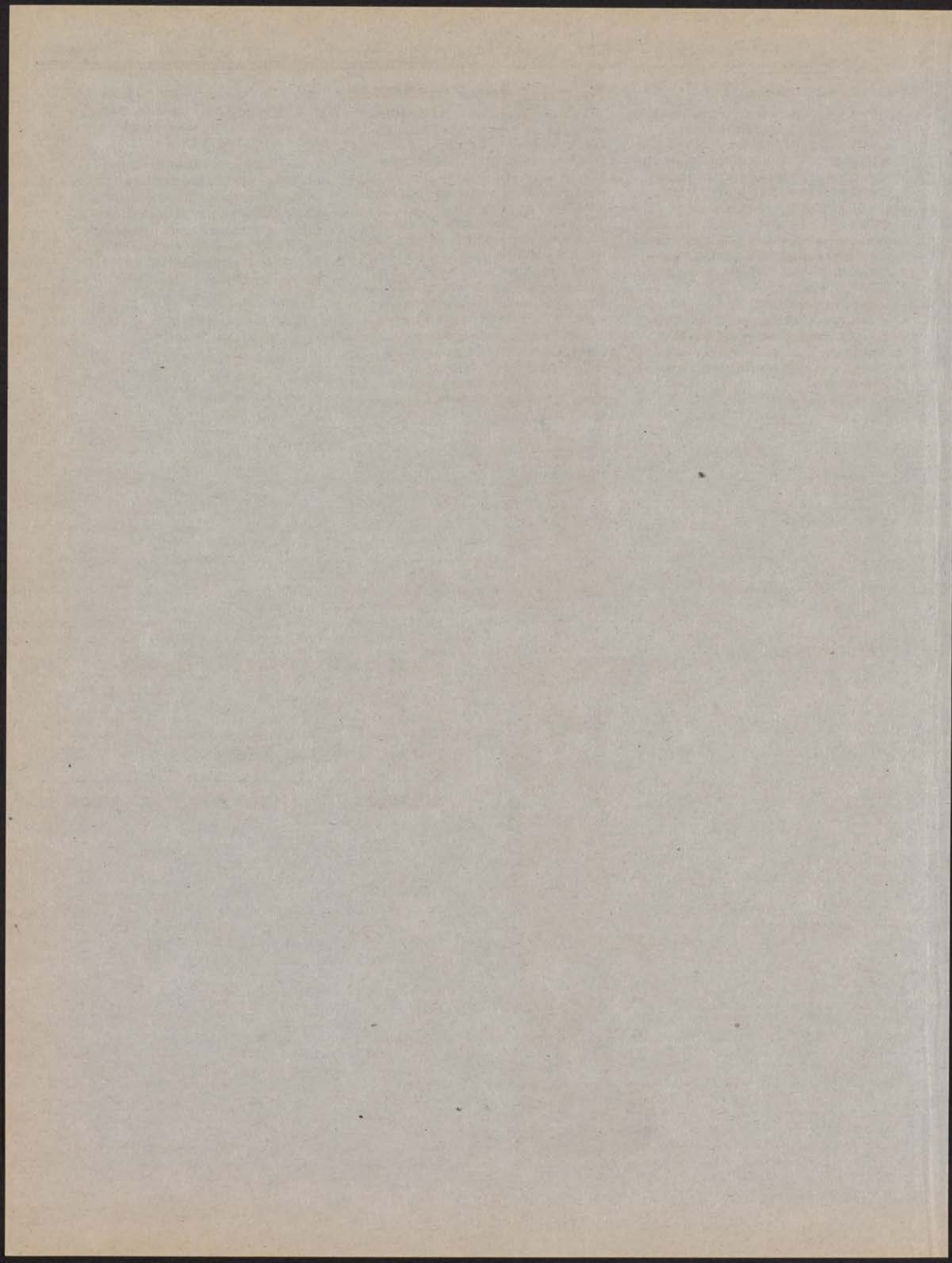
Dated: December 23, 1992.

Lamar Alexander,

Secretary of Education.

[FR Doc. 92-31634 Filed 12-29-92; 8:45 am]

BILLING CODE 4000-01-M



Register Federal Register

Wednesday
December 30, 1992

Part V

Department of the Interior

Bureau of Indian Affairs

Approved Tribal-State Compact; Notice

DEPARTMENT OF THE INTERIOR**Bureau of Indian Affairs****Indian Gaming**

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100-497), the Secretary of the Interior shall publish, in the Federal

Register, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary-Indian Affairs, Department of the Interior, through his delegated authority, has approved the Gaming Compact Between the Devils Lake Sioux Tribe and the State of North Dakota, which was enacted on October 7, 1992.

DATES: This action is effective December 30, 1992.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Interim Staff Director,

Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219-0994.

Dated: December 17, 1992.

Ron Eden,

Acting Assistant Secretary, Indian Affairs.

[FR Doc. 92-31750 Filed 12-29-92; 8:45 am]

BILLING CODE 4310-02-M

Register Federal Reporter

Wednesday
December 30, 1992

Part VI

Department of the Interior

Bureau of Indian Affairs

Approved Tribal-State Compact; Notice

DEPARTMENT OF THE INTERIOR**Bureau of Indian Affairs****Indian Gaming**

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100-497), the Secretary of

the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary-Indian Affairs, Department of the Interior, through his delegated authority, has approved the Fort McDowell Mohave-Apache Indian Community of Arizona and the State of Arizona Gaming Compact of 1992, enacted on November 25, 1992.

DATES: This action is effective December 30, 1992.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Interim Staff Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219-0994.

Dated: December 23, 1992.

Eddie F. Brown,

Assistant Secretary, Indian Affairs.

[FR Doc. 92-31751 Filed 12-29-92; 8:45 am]

BILLING CODE 4310-02-M

Registered Federal Report

**Wednesday
December 30, 1992**

Part VII

Department of Housing and Urban Development

**Office of the Assistant Secretary for
Housing-Federal Housing Commissioner**

24 CFR Part 235

**Amendment to the Regulations for the
Implementation of Section 235(r) of the
National Housing Act; Final Rule**

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 235

[Docket No. R-92-1615; FR-3245-F-01]

Amendment to the Regulations for the Implementation of Section 235(r) of the National Housing Act

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule amends the rule published in the *Federal Register* on June 14, 1991 at 56 FR 27622, which implemented section 235(r) of the National Housing Act. Section 235(r) authorizes the Secretary to insure a mortgage, the proceeds of which are used to refinance a mortgage insured under section 235. The purpose of the program is to reduce the interest rate on mortgages insured and assisted under section 235 so that there would be a reduction in the assistance payments which the Department pays on behalf of the mortgagors. However, no loans have been made by mortgagees under section 235(r). Therefore, the Department is revising the program in the hope that it will be more attractive to mortgagees and mortgagors. This final rule will make the following changes: (1) The method of determining the interest rate has been changed so that the mortgagee will be entitled to a premium rate of interest during the full term of the mortgage, which rate will enable the mortgagee to market the loan at a premium return, thereby recouping its initial origination expenses; (2) the interest rate must be less than the rate on the mortgage being refinanced; (3) the maximum amount of the mortgage shall be the lesser of (i) the unpaid principal balance due on the mortgage being refinanced, including advances made by the mortgagee and any current interest due and delinquent interest not to exceed two months and (ii) the original principal amount of the mortgage being refinanced; and (4) the refinancing costs incurred in connection with the mortgage loan and permitted by the regulations must be paid by either the mortgagee or mortgagor and cannot be divided between those parties, and cannot include any unpaid interest on the mortgage being refinanced. The final rule also codifies § 235.4 and Appendix A by creating a new subpart H under part 235. In

addition, the final rule specifies which of the provisions of the direct endorsement requirements contained in 24 CFR 203.5 and 203.255, published as a final rule in the *Federal Register* on December 9, 1992 at 57 FR 58326, apply to section 235(r) mortgages. Reference is also made to the specific mortgagee and underwriter certifications which apply to mortgages insured under section 235(r).

EFFECTIVE DATE: February 16, 1993.

FOR FURTHER INFORMATION CONTACT: Robert E. Falkenstein, Jr., Office of Insured Single Family Housing, Department of Housing and Urban Development, room 9270, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708-2720. TDD (202) 708-4594. (These are not toll free numbers.)

SUPPLEMENTARY INFORMATION:

Background

Section 235 was added to the National Housing Act (Act) in 1968 and authorizes the Secretary to insure mortgages for the purpose of acquisition of housing by lower income families. Section 235 also authorizes the Secretary to assist the mortgagor by entering into a contract with the mortgagee to make a portion of the mortgage payments on behalf of the mortgagor.

Many of the mortgages insured under section 235, which are still outstanding, were made during high interest rate years of 1980, 1981 and 1982. HUD would be able to save substantial amounts of assistance payments if the mortgages were refinanced at the current lower interest rates. Therefore, section 235(r) was enacted to provide incentives for mortgagees and mortgagors to refinance by providing for an increase in interest rate to compensate the mortgagee for paying certain financing costs associated with the refinancing, including an amount paid to the mortgagor as an inducement to agree to refinance.

The Department implemented section 235(r) by permitting the mortgagees to charge an initial rate of interest greater than that otherwise allowed by the Secretary for a period of time (recovery period) necessary for the mortgagee to recoup its payments of the financing costs. Since mortgagees were unwilling to bear the risk of default or prepayment during the recovery period, no loans have been made under this program. In order to generate some interest in the program, HUD is amending § 235.4 of the regulations and Appendix A to part 235, which implemented the 235(r) program, to change the manner in which

the interest rate will be determined. Rather than having a higher rate of interest during a recovery period and then decreasing it for the remainder of the mortgage term, § 235.1202 of the new regulation provides for a premium rate of interest during the entire mortgage term so that the mortgagee can market the loan at a premium return, thereby recouping the financing cost which it expended. A premium interest rate for the entire term of the loan should make the loan more attractive to lenders and investors alike. The premium interest rate will be negotiated between the parties and shall not exceed the maximum rate determined by the Secretary and published by notice in the *Federal Register*, plus a maximum margin of additional percentage points, as determined by the Secretary and published by notice in the *Federal Register*, if the mortgagee pays all of those approved costs associated with the closing of the loan. If the mortgagor pays any of such costs, then the mortgagee cannot pay the mortgagor a financial incentive, and the mortgagee will not be entitled to the extra margin. In any event, the interest rate on the mortgage must be less than the interest rate shown on the mortgage to be refinanced.

In accordance with § 235.1202(b)(3)(i) (A) and (B), the Secretary has set (1) the maximum interest rate at 8 percent (8%) per annum and (2) the maximum margin which may be added to the maximum rate, at one and a half percentage points, which rate and margin will each be in effect until changed by a notice in the *Federal Register*.

Section 235.1202 also makes it clear that any repayment by the mortgagee to HUD of overpaid assistance, which has not been repaid by the mortgagor to the mortgagee, may be added to the unpaid principal balance of the mortgage to be refinanced.

The material contained in § 235.4 and Appendix A is being codified by the creation of a new subpart H in part 235 with §§ 235.1200 through 235.1222. The provisions contained in these new sections are the same as those contained in § 235.4 and Appendix A, with the exception of the changes described in this document.

Justification for Final Rule

Section 235(r)(7) of the National Housing Act provides that section 235(r) shall be implemented by a notice published in the *Federal Register*. However, since the implementation of section 235(r) required amendments to the current regulations, HUD implemented the program through a final rule by adding a new § 235.4,

"Refinancing under 235(r) of the National Housing Act", and an Appendix A to part 235. As § 235.4 and the Appendix are being amended, the Department has codified them into a new subpart H by way of this final rule. Since section 235(r)(7) of the Act provides that the program shall be implemented by a notice, the Department finds that it is unnecessary to solicit public comment before issuing this rule.

Findings and Certifications

National Environmental Policy Act

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, 451 Seventh Street SW., room 10276, Washington, DC 20410.

Executive Order 12291 on Regulations

This rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not

(1) Have an annual effect on the economy of \$100 million or more;

(2) Cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The Secretary, in approving this rule for publication, has certified, in accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), that the rule does not have a significant economic impact on a substantial number of small entities. If the rule impacts on small entities at all, the impact will be positive, as the rule is amending a HUD-insured mortgage program in an effort to make it more acceptable in the financial market.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained

in this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus is not subject to review under the Order. The rule involves the refinancing of mortgages insured under section 235 of mortgages to be insured under section 235(r). The purpose of the refinancing is to lower the interest rate on the mortgages so that the assistance payments being made by the Department will be reduced, thus saving the Department large cash outlays. The effect on families would be beneficial in that they would have a potential savings with respect to repayment of assistance payments to the Department and would also receive an incentive payment to refinance.

This rule was listed as item 1430 on the Department's semiannual agenda of regulations published on November 3, 1992 (57 FR 51392, 51420) pursuant to Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 235

Condominiums, Cooperatives, Homeownership, Grant programs: housing and community development, Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, the Department amends 24 CFR part 235 as follows:

1. The authority citation for 24 CFR part 235 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715z; 42 U.S.C. 3535(d).

§ 235.4 [Removed]

2. Section 235.4 entitled "Refinancing under section 235(r) of the National Housing Act" and "Appendix A to Part 235—Refinancing Section 235(r)" are removed.

3. A new subpart H, consisting of §§ 235.1200 through 235.1222, is added to read as follows:

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

Subpart H—Eligibility Requirements: Contract Rights and Obligations; Assistance Payments Contracts; Servicing Responsibilities—Refinancing Mortgages Under Section 235(r) of the National Housing Act

Sec.

- 235.1200 Authority.
- 235.1202 Eligibility requirements.
- 235.1204 Processing section 235(r) mortgages under the direct endorsement program.
- 235.1206 Cross-reference.
- 235.1208 Cross-reference.
- 235.1210 Additional provisions of the assistance payment contracts for section 235(r).
- 235.1212 Termination of assistance payments contracts on mortgages to be refinanced.
- 235.1214 Execution of assistance payment contract.
- 235.1216 Eligibility for assistance payments.
- 235.1218 Term of assistance payment contract in connection with mortgages insured under section 235(r) of the Act.
- 235.1220 Recapture of assistance payments.
- 235.1222 Cross-reference.

Eligibility Requirements; Direct Endorsement

§ 235.1200 Authority.

In accordance with the authority contained in section 235(r) of the National Housing Act, the Secretary may insure a mortgage given to refinance an existing mortgage which is insured under section 235 of the National Housing Act. As provided in this subpart, specific provisions of subpart A of this part shall apply to the insurance of a mortgage under section 235(r).

§ 235.1202 Eligibility requirements.

A mortgage to refinance a mortgage insured under section 235 shall be eligible for insurance if it meets the applicable requirements of subpart A of this part and the special requirements set forth in this section.

(a) *Applicable sections of 24 CFR part 235, subpart A.* The provisions of 24 CFR part 235, subpart A which apply to a mortgage insured under section 235(r) are the following:

Sec.

- 235.1 Cross-reference.
- 235.3 Waivers.
- 235.5 Definitions used in this subpart.
- 235.10 Eligible mortgagors (paragraphs (c) through (e)).
- 235.12 Recapture of assistance payments.
- 235.22 Mortgage provisions.
- 235.33 Mortgage lien.

Sec.

235.40 Late charge.

(b) *Special requirements applicable to mortgages insured under section 235(r) of the National Housing Act.* The refinancing mortgage must meet the following special requirements:

(1) *Mortgage amount.* It must be in an amount not exceeding the lesser of:

(i) The unpaid principal balance due on the mortgage being refinanced, including any advances properly made by the mortgagee under the terms of the mortgage and any current interest due and delinquent interest not to exceed two months; and

(ii) The original principal amount of the mortgage being refinanced.

(2) *Maturity date.* It must have a maturity not to exceed the remaining term of the section 235 mortgage being refinanced. In the event that the remaining term is measured in years and months, the terms for the refinancing mortgage shall be rounded down to the next whole year.

(3) *Interest rate.* (i) The 235(r) interest rate is the rate negotiated between the parties, not to exceed:

(A) A maximum rate determined by the Secretary and published by notice in the Federal Register, plus

(B) A maximum margin of additional percentage points, as determined by the Secretary and published by notice in the Federal Register, provided the mortgagee pays all of those costs associated with the closing of the mortgage loan which are described in paragraph (b)(4) of this section.

(ii) If the mortgagee does not pay all those costs and fees associated with the closing which are enumerated in paragraph (b)(4) of this section, the mortgagee will not be entitled to the additional percentage points margin, or any part thereof.

(iii) The interest rate on the 235(r) mortgage must be less than the interest rate shown on the mortgage being refinanced.

(4) *Refinancing Costs.* The refinancing costs for which the mortgagee may collect the margin of additional percentage points in interest, if the mortgagee pays such costs, are as follows:

(i) An amount, as approved by the Secretary, as an incentive to the mortgagor to refinance a mortgage insured under section 235;

(ii) Amounts, as approved by the Secretary, for discounts, loan origination fees, closing costs, and other costs incurred in connection with the refinancing; and

(iii) Prepaid interest on the mortgage to be insured but not to exceed a period of ten (10) days.

(5) *Eligible mortgagee.* It shall have been made to, and held by, a mortgagee approved by the Secretary.

(6) *Eligible mortgagor.* (i) It must be executed by a mortgagor who is eligible for, and receiving, assistance payments with respect to the mortgage being refinanced and from whom a recertification was obtained within the preceding twelve months prior to the application for the 235(r) mortgage, or a new recertification was required prior to the execution of the mortgage credit worksheet by the direct endorsement lender, or the firm commitment was issued by HUD.

(ii) The mortgagor must be an occupant of the property securing the mortgage.

(iii) The mortgagor has not received payments for the costs of refinancing, nor have such payments been made on his behalf, as described in paragraph (b)(4) of this section, for a period of 60 months from the date of the first payment of principal and interest on the mortgage to be refinanced; provided, however, that if the mortgagor pays its own cost to refinance, then this prohibition will not apply.

(iv) The mortgagor is eligible to continue to receive assistance in connection with the 235(r) mortgage, or the mortgagee has executed a HUD Notice of Suspension form which suspends the assistance payment contract from the date of disbursement of the mortgage loan.

(v) The mortgagors have agreed to recertify, on a form prescribed by the Secretary, as to occupancy, employment, family composition and income in accordance with 24 CFR 235.350.

(vi) If the property is subject to a recapture mortgage securing the payment to the Secretary of assistance payments made on behalf of the mortgagor, the mortgagor must agree to modify and subordinate such mortgage to the mortgage to be insured under section 235(r) in accordance with instructions of the Secretary.

(vii) If the mortgage submitted for insurance requires an increase in the mortgagor's portion of the monthly payments due under the mortgage by more than \$50.00 over the amount the mortgagor was paying on the mortgage being refinanced, then a mortgage credit analysis must be performed on the mortgagor to establish that his income is or will be adequate to meet his portion of the periodic payment due under the new mortgage and that the mortgagor has a general credit standing satisfactory to the Secretary as required by 24 CFR 203.34 which is cross referenced in 24 CFR 235.1. Only that part of the

mortgagor's income which can be expected to continue for approximately the first five years of the mortgage term will be considered effective income for the purpose of determining the adequacy of the mortgagor's income.

(viii) Cooperative members, who are receiving assistance payments, which in all cases are based on the cooperative member's proportionate share of the obligation under the project mortgage, are not eligible for section 235(r) mortgages.

(7) *Monthly Payments.* The mortgage must have monthly principal and interest payments at the 235(r) interest rate which are less than the monthly payments of principal and interest on the mortgage being refinanced.

§ 235.1204 Processing section 235(r) mortgages under the direct endorsement program.

The regulations containing the requirements which a mortgage must meet for the direct endorsement program are contained in 24 CFR 203.5 and 203.255. Under those sections, mortgages to be insured under section 235(r) must be originated through direct endorsement processing. There are several provisions of 24 CFR 203.5 and 203.255 which do not apply to section 235(r) mortgages and there are several additional requirements which are specific to section 235(r) mortgages which are contained in paragraph (b) of this section. Other than those provisions which have been specified in paragraph (a) of this section, the provisions contained in 24 CFR 203.5 and 203.255 apply to mortgages insured under section 235(r).

(a) *Inapplicable Provisions.* (1) The properties, which are to be security for the section 235(r) mortgages, are currently security for mortgages insured under section 235, and are existing properties with no requirement for appraisals. The requirements for an appraisal in 24 CFR 203.5(e) and 203.255(b)(1) and for a review of an appraisal in 24 CFR 203.255(b)(5) shall not apply to a mortgage to be insured under section 235(r) of the National Housing Act.

(2) There is no requirement that the mortgagee perform the mortgage credit analysis described in 24 CFR 203.5(d) for a mortgage insured under section 235(r) unless the mortgagor's portion of the monthly payments due under the mortgage to be insured increase by more than \$50.00 over the amount the mortgagor was paying on the mortgage being refinanced as provided in § 235.1202(b)(6). If the mortgagor's portion of the payment does not increase by more than \$50.00, then the

mortgagee shall perform the underwriting requirements in accordance with the instructions contained in a handbook or other similar publication which is provided to all mortgagees approved for the direct endorsement procedure.

(3) Since there are special eligibility requirements for mortgages insured under section 235(r), paragraphs (c)(2) and (c)(3) of 24 CFR 203.255 do not apply to such mortgages, and in lieu thereof specific provisions for section 235(r) mortgages have been substituted as contained in paragraph (b) of this section.

(b) *Special Provisions.* In addition to the review and determinations which must be made of the documents submitted by the mortgagee to the Secretary in accordance with 24 CFR 203.255(c), as revised for mortgages insured under section 235(r) by paragraph (a) of this section, the Secretary shall make the following specific determinations for section 235(r) mortgages:

(1) That the term of the mortgage meets the requirements of 24 CFR 235.120(b)(2).

(2) That the stated mortgage amount does not exceed the maximum dollar limitation under 24 CFR 235.1202(b)(1).

(3) That the interest rate on the mortgage meets the requirements of 24 CFR 235.1202(b)(3).

(c) *Authority to sign.* A direct endorsement mortgagee processing and underwriting a section 235(r) mortgage shall have the authority to sign, for and on behalf of the Secretary, in accordance with procedures established by the Secretary, without further specific approval, the following documents:

(1) *Approval of amount of assistance payments.* The Form HUD 93100, "Application for Homeownership Assistance under section 235 of the National Housing Act," which evidences a review of the information obtained from the mortgagor on the application, a determination of eligibility or ineligibility for assistance payments, and the amount of the assistance payments to which the mortgagor is entitled.

(2) *Subordination and modification agreement.* An agreement, which subordinates a recapture second mortgage or deed of trust (recapture mortgage) held by HUD in accordance with 24 CFR 235.12, to the lien of the mortgage being submitted for insurance so that the recapture mortgage will remain a second lien. If the recapture mortgage is a third lien following a second lien made, held or insured by a Federal, State or local governmental agency, and approved by the Secretary,

the direct endorsement mortgagee may sign an agreement subordinating the recapture mortgage to third lien place. The agreement shall also contain a modification of the recapture mortgage to include a new note to be signed by the mortgagor securing repayment of the assistance to be paid under the mortgage to be insured under section 235(r).

Contract Rights and Obligations

§ 235.1206 Cross-reference.

The provisions of subpart B of title 24 of part 235 shall be applicable to mortgages insured in accordance with section 235(r) of the National Housing Act.

Contract for Assistance Payments

§ 235.1208 Cross-reference.

(a) Title 24, part 235, subpart C, as modified and supplemented by this subpart, shall constitute the contract between the mortgagee and the Secretary for assistance payments in connection with a mortgage insured under section 235(r) of the National Housing Act.

(b) The sections of subpart C of this part which apply in connection with a mortgage insured under section 235(r) are the following:

Sec.	
235.301	Definitions.
235.340	Time of payments.
235.350	Mortgagor's required recertification.
235.355	Mortgagor's optional recertification.
235.360	Adjustment in assistance payments.
235.361	Recovery of assistance payments.
235.365	Mortgagee records.
235.370	Effect of assignment of mortgage with an assistance payment contract.
235.375	Termination, suspension or reinstatement of the assistance payments contract.
235.499	Effect of amendments.

§ 235.1210 Additional provisions of the assistance payment contracts for section 235(r).

(a) *Assistance payments and handling charges.* The assistance payments on behalf of the mortgagor shall be the lesser of the following:

(1) The difference between 20 percent (or 28 percent in the case of contracts entered into for a ten-year term (ten year contracts) pursuant to the authority under section 235(c)(1) of the National Housing Act, as amended by the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181)) of the homeowner's adjusted monthly income and the required monthly payment under the mortgage for principal,

interest, taxes, insurance, and mortgage insurance premium.

(2) The difference between the required monthly payment under the mortgage for principal, interest, and mortgage insurance premium and the monthly payment which would be required for principal and interest if the mortgage bore the lower interest rate established by the Secretary and in effect at the time of the closing of the mortgage being refinanced and which is referred to as the "floor rate."

(b) *Floor rates.* The floor rates are determined by the date of the closing of the mortgage being refinanced. As an example, the following chart contains floor rates. However, mortgagees must check the HUD Form 93100 for the mortgage being refinanced to obtain the floor rate for the mortgage, which rate is to be used to compute the formula contained in paragraph (a) of this section.

TABLE

Date of closing	Interest rate	
	Note rate (percent)	To compute second element of sub-section (a)(2) (percent)
8/9/68-1/4/76	N/A	1
1/5/76-3/6/78	N/A	5
3/7/78-3/8/81	N/A	4
On or after 3/9/81	13.50 or below ..	4
	13.75-14.00	4 3/4
	14.25-14.50	5 1/2
	15.00	6
	15.50	6 3/4
	16	7 1/4
	16.50	8
	17.50	8

(c) *Handling charges.* In addition to the assistance payments referred to in paragraph (a) of this section, the mortgagee shall be entitled to the monthly payment of an amount the Secretary deems sufficient to reimburse the mortgagee for its expense in handling the mortgage.

(d) *Taxes in monthly payment.* Special assessments levied by a governmental body are to be included under the term "taxes" as part of the monthly payment. However, ground rents, assessments of a homeowners' association or condominium association, and special assessments levied by persons or private organizations are not to be included.

§ 235.1212 Termination of assistance payments contracts on mortgages to be refinanced.

The assistance payments contract for the mortgage being refinanced shall be terminated on the day before the disbursement of the proceeds of the

mortgage to be insured, and no further assistance payments shall be made under such contract.

§ 235.1214 Execution of assistance payment contract.

The issuance of a mortgage insurance certificate pursuant to § 235.1 et seq. shall also constitute the execution of the assistance payments contract with respect to the mortgage being insured.

§ 235.1216 Eligibility for assistance payments.

(a) To be eligible for assistance payments, a homeowner must:

(1) Be a mortgagor on a mortgage insured under section 235(r);

(2) Have been entitled to, and receiving, assistance payments under the mortgage being refinanced; and

(3) According to the formula contained under § 235.1210(a), continue to be eligible for such payments under the 235(r) mortgage.

(b) The mortgagee, holding the mortgage being refinanced, must certify that the mortgagor is eligible for, and receiving, assistance payments under the mortgage being refinanced and that the last recertification by the mortgagor was within the preceding twelve months prior to the application for the section 235(r) mortgage. If the last recertification was not within that period, then the mortgagee will have to obtain a current recertification from the mortgagor for the purpose of determining whether the mortgagor remains eligible to continue receiving assistance payments under the mortgage being refinanced.

(c) In addition, the mortgagee originating the 235(r) mortgage must obtain a new certification from the

mortgagor for eligibility for assistance payments under the 235(r) mortgage.

(d) For purposes of determining eligibility under the 235(r) mortgage, the mortgagor must certify as to occupancy, employment, family composition and income on a form prescribed by the Secretary.

(e) The mortgagor shall agree to recertify, on a form prescribed by the Secretary, as to occupancy, employment, family composition and income in accordance with 24 CFR 235.350.

(f) Homeowners, who are cooperative members and have been receiving assistance payments under section 235, are not eligible for assistance payments in connection with section 235(r) since they are not eligible for a mortgage insured under that section.

§ 235.1218 Term of assistance payment contract in connection with mortgages insured under section 235(r) of the Act.

(a) *Existing contracts with original terms in excess of ten years.* In cases where the existing contract has an original term in excess of ten years, the term of the new assistance payments contract in connection with section 235(r) shall commence on the date of disbursement of the mortgage proceeds as certified by the mortgagee and shall continue until the contract is terminated pursuant to 24 CFR 235.375.

(b) *Existing ten year contracts.* (1) In cases of existing ten year contracts, the term of the new assistance payments contract in connection with section 235(r) shall commence on the date of the disbursement of the mortgage proceeds as certified by the mortgagee and shall continue for the unexpired term of the existing ten year contract, or

until such earlier time as the contract is otherwise terminated pursuant to 24 CFR 235.375. The mortgagor will acknowledge receipt of a notice containing the expiration date of the new assistance payments contract.

(2) If the Secretary determines that the mortgagor is unable, by reason of the new contract having reached its maturity, to resume full payments due under the mortgage insured under section 235(r) of the National Housing Act, the Secretary will, to the extent of funds available pursuant to section 235(c)(3) of the Act, contract to make, and make, continued assistance payments on behalf of the mortgagor for such period as the Secretary determines to be appropriate.

§ 235.1220 Recapture of assistance payments.

The mortgagor shall execute an agreement subordinating the recapture mortgage, if any, to the section 235(r) mortgage. The mortgagor shall also execute a new note for recapture of assistance payments, and amend the recapture mortgage to include in the principal balance the assistance payments made in connection with the mortgage insured under section 235(r).

Servicing Responsibilities

§ 235.1222 Cross-reference.

The provisions of subpart G of 24 CFR part 235 shall be applicable to mortgages insured under section 235(r).

Dated: December 16, 1992.

Arthur J. Hill,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 92-31712 Filed 12-29-92; 8:45 am]

BILLING CODE 4210-27-M

Journal of Clinical Investigation

Wednesday
December 30, 1992

Part VIII

Department of
Health and Human
Services

National Institutes of Health

Recombinant DNA; Notices

DEPARTMENT OF HEALTH AND HUMAN SERVICES**National Institutes of Health****Recombinant DNA Advisory Committee; Meeting**

Pursuant to Public Law 92-463, notice is hereby given of a meeting of the Recombinant DNA Advisory Committee on January 14, 1993. The meeting will be held at the National Institutes of Health (NIH), Building 1, Wilson Hall, 9000 Rockville Pike, Bethesda, Maryland 20892, starting at approximately 9 a.m. on January 14, 1993, to adjournment at approximately 3 p.m. The meeting will be open to the public to discuss a proposed major action under the *NIH Guidelines for Research Involving Recombinant DNA Molecules* (51 FR 16958) involving an addition to Appendix D regarding a human gene therapy protocol and other matters to be considered by the Committee.

Attendance by the public will be limited to space available. Members of the public wishing to speak at this meeting may be given such opportunity at the discretion of the Chair.

Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, National Institutes of Health, Building 31, room 4B11, Bethesda, Maryland 20892, Phone (301) 496-9838, FAX (301) 496-9839, will provide materials to be discussed at this meeting, roster of committee members, and substantive program information. A summary of the meeting will be available at a later date.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could

not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the *NIH Guidelines*. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: December 24, 1992.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 92-31762 Filed 12-29-92; 8:45 am]

BILLING CODE 4140-01-M

Recombinant DNA Research: Proposed Actions Under the Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of proposed action under the *NIH Guidelines for Research Involving Recombinant DNA Molecules* (51 FR 16958).

SUMMARY: This notice sets forth a proposed action to be taken under the *National Institutes of Health (NIH) Guidelines for Research Involving Recombinant DNA Molecules*. Interested parties are invited to submit comments concerning these proposals. This proposal will be considered by the Recombinant DNA Advisory Committee (RAC) at its meeting on January 14, 1993. After consideration of this proposal and comments by the RAC, the Director of the National Institutes of Health will issue decisions in accordance with the *NIH Guidelines*.

DATES: Comments received by January 8, 1993, will be reproduced and distributed to the RAC for consideration at its January 14, 1993, meeting.

ADDRESS: Written comments and recommendations should be submitted to Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities, Building 31, room 4B11, National Institutes of Health, Bethesda, Maryland 20892, or sent by FAX to 301-496-9839.

All comments received in timely response to this notice will be considered and will be available for public inspection in the above office on weekdays between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT:

Background documentation and additional information can be obtained from the office of Recombinant DNA Activities, Building 31, room 4B11, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-9838.

SUPPLEMENTARY INFORMATION: The NIH will consider the following action under the *NIH Guidelines for Research Involving Recombinant DNA Molecules*:

In a letter dated December 7, 1992, Dr. Ivor Royston, San Diego Regional Cancer Center, San Diego, California, requested approval for a human gene therapy protocol. The title of this protocol is: *Phase I Study of Cytokine Therapy of Cancer, Active Immunotherapy of Glioblastoma with Tumor Cells or Fibroblasts Genetically Modified to Secrete Interleukin-2*.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the *Catalog of Federal Domestic Assistance*. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the *NIH Guidelines*. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the *Catalog of Federal Domestic Assistance* are affected.

Dated: December 24, 1992.

Jay Moskowitz,

Associate Director for Science Policy and Legislation, NIH.

[FR Doc. 92-31763 Filed 12-29-92; 8:45 am]

BILLING CODE 4140-01-M

Federal Register

Wednesday
December 30, 1992

Part IX

Department of Justice

Bureau of Prisons

28 CFR Part 543

Control, Custody, Care, Treatment and
Instruction of Inmates; Claims Under the
Federal Tort Claims Act; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 543

Control, Custody, Care, Treatment and Instruction of Inmates; Claims Under the Federal Tort Claims Act

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending its rule on Claims Under the Federal Tort Claims Act to conform with changes in delegated authority to consider, adjust, determine, compromise, settle, and pay federal tort claims. This amendment removes unnecessary references to dollar amounts and reorganizes and revises administrative procedures on the processing of claims.

EFFECTIVE DATE: December 30, 1992.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 307-3062.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on Claims Under the Federal Tort Claim Act. A final rule on this subject was published in the *Federal Register* May 1, 1981 (46 FR 24899).

The Department of Justice has delegated authority to the heads of its components to adjust, determine, compromise, and settle claims up to the dollar value amount specified in 28 CFR 0.172. This amount was raised to \$10,000 in an amendment published in the *Federal Register* on September 26, 1991 (56 FR 48734). The Bureau of Prisons is therefore amending its regulations in 28 CFR part 543 in order to reflect this increase in settlement authority. In order to minimize the need to amend its regulations subsequent to any future increase in the dollar value amount, revised § 543.30 now simply refers to the amount as specified in § 0.172. Further redelegation of settlement authority in § 543.30 is also revised to eliminate from the rule unnecessary references to dollar value amounts. These monetary amounts are established by the Director, Bureau of Prisons, in internal agency guidelines implementing the Bureau's policy on Claims Under the Federal Tort Claims Act. Administrative procedures in § 543.31 on the processing of claims have been reorganized and revised for the sake of clarity and to remove

unnecessary references to dollar amounts. For ease of understanding, the entire subpart is being republished in this amendment.

Because this amendment is conforming in nature with respect to the dollar amount value of settlement authority and otherwise relates to agency procedures, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the *Federal Register*.

The Bureau of Prisons has determined that this rule is not a major rule for the purpose of Executive Order 12291. The Bureau of Prisons had determined that Executive Order 12291 does not apply to this rule because the rule pertains to agency management. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 543

Claims.

Dated: December 23, 1992.

Kathleen M. Hawk,
Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(q), part 543 in subchapter C of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT**PART 543—LEGAL MATTERS**

1. The authority citation for 28 CFR part 543 is added to read as follows, and all other authority citations within the part are removed:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510, 1346(b), 2671–80; 28 CFR 0.95–0.99, 0.172, 14.1–11.

2. In part 543, subpart C, consisting of §§ 543.30 through 543.32, is revised to read as follows:

Subpart C—Claims Under the Federal Tort Claims Act

Sec

543.30 Purpose and scope.

543.31 Procedures.

543.32 Appreciation and depreciation.

Subpart C—Claims Under the Federal Tort Claims Act**§ 543.30 Purpose and scope.**

The Bureau of Prisons shall consider administrative claims asserted under the Federal Tort Claims Act in accordance with the provisions of 28 CFR part 14. The Director of the Bureau of Prisons is delegated authority by 28 CFR 0.96 and 0.172 to consider, adjust, determine, compromise, settle, and pay federal tort claims if the amount of a proposed adjustment, compromise, settlement, or award does not exceed the amount specified in 28 CFR 0.172. Pursuant to 28 CFR 0.97, this authority is redelegated to the General Counsel and to Regional Counsel in accordance with the provisions of this subpart.

§ 543.31 Procedures.

(a) Staff shall provide the necessary forms to an individual who wishes to file a claim.

(b) Claims are to be submitted first to the Regional Office in the region where the basis for the claim occurred (see 28 CFR part 503 for the addresses of Regional Offices).

(c) Claims are ordinarily referred by the Regional Office to the appropriate institution for investigation. The Warden shall designate a staff member to investigate and prepare a report on the claim. The report, with the Warden's recommendations, shall be forwarded to Regional Counsel.

(d) The Regional Counsel shall consider the merits of the tort claim. The Regional Counsel may deny the claim, propose to the claimant a settlement (up to an amount established by the director, Bureau of Prisons), or forward the claim with recommendations to the Office of General Counsel, Central Office.

(e) The General Counsel shall consider the merits of a tort claim not denied or settled by Regional Counsel, and may deny the claim, propose a settlement to the claimant (up to an amount established by the Director, Bureau of Prisons), or otherwise dispose of the claim.

(f) The denial of a claim constitutes a final administrative action. Either the Regional Counsel or General Counsel may deny any claim filed under the Federal Tort Claims Act, regardless of the amount.

(g) Staff shall attempt to make a claim determination within six months from

the date of filing. If a final disposition is not made within the six-month period, the claimant may assume that the claim is denied. An individual whose claim is denied may elect to institute a suit upon denial of that claim.

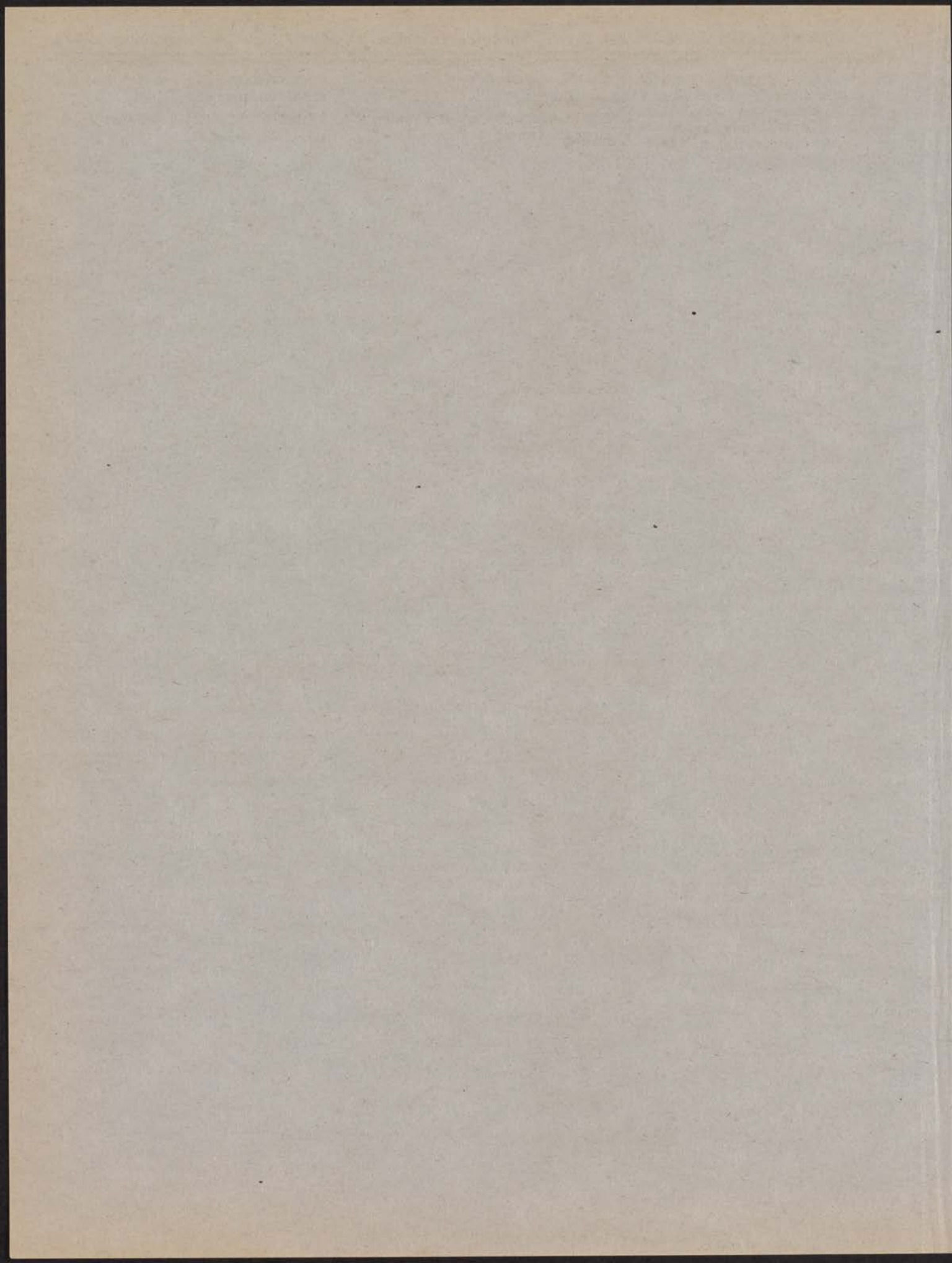
§ 543.32 Appreciation and depreciation.

Staff may take appreciation or depreciation into account in settling a claim filed under the Federal Tort

Claims Act involving loss of or damage to personal property.

[FR Doc. 92-31754 Filed 12-29-92; 8:45 am]

BILLING CODE 4410-05-M



Resistant to Federal Pressure

Wednesday
December 30, 1992

Part X

The President

Presidential Determination No. 93-6—
Determination Pursuant to Section 2(b)(2)
of the Migration and Refugee Assistance
Act of 1962, as Amended

Presidential Documents

Title 3—

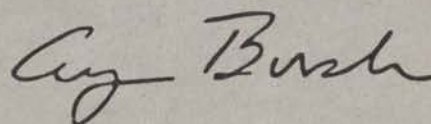
The President

Presidential Determination No. 93-6 of December 18, 1992

Determination Pursuant to Section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as Amended**Memorandum for the Secretary of State**

Pursuant to section 2(b)(2) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(b)(2), I hereby designate refugees, displaced persons, and victims of conflict from and within the former Yugoslavia as qualifying for assistance under section 2(b)(2) of the Act, and determine that such assistance will contribute to the foreign policy interests of the United States.

You are directed to inform the appropriate committees of the Congress of this determination and the obligation of funds under this authority, and to publish this determination in the **Federal Register**.

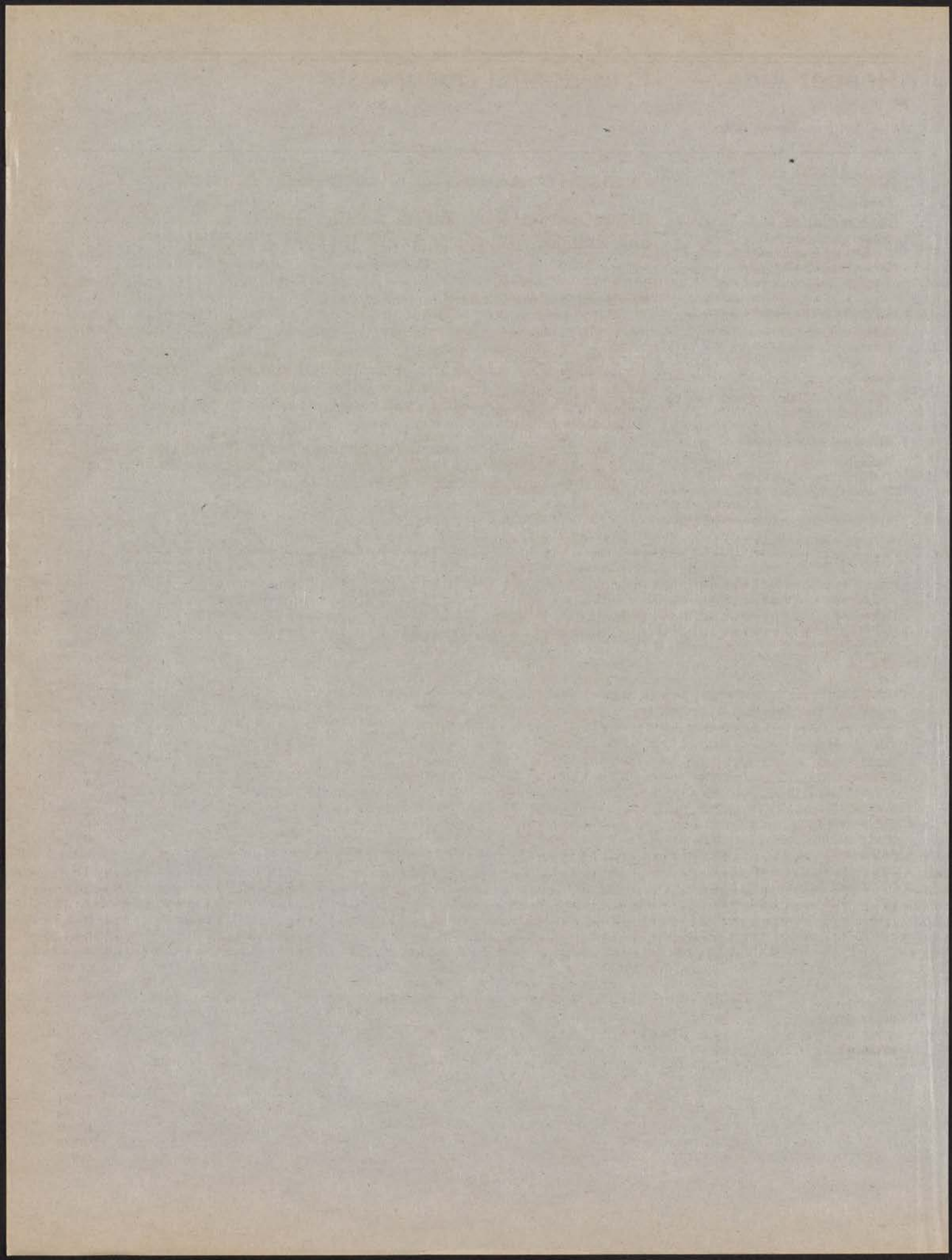


THE WHITE HOUSE,
Washington, December 18, 1992.

[FR Doc. 92-31860

Filed 12-28-92; 3:13 pm]

Billing code 3195-01-M



Reader Aids

Federal Register

Vol. 57, No. 251

Wednesday, December 30, 1992

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